THE JURIST

Volume XVII JANUARY, 1957 No. 1

LAW IN THE IMAGE OF GOD*

ONCE again, we meet as friends within the portals of this sacred edifice to participate in the ancient custom of the solemn, " Red Mass ". For long ago—over two centuries before the discovery of this continent—judges and lawyers were accustomed at the time of the annual opening of the Courts, to assemble for the observance of this sacred ceremony. In humble acknowledgment of their dependence upon Almighty God they prayed for enlightenment and strength from the Holy Spirit. For Christ had promised that He would send the Holy Spirit to abide in His Church, to convince the world of the existence of sin, the Divine sanction upon justice, and the inevitability of final judgment. The colorful red vestments symbolic of the flaming love of God, and the prayers and Gospel of this Mass promise enlightenment to those who truly seek Him and strive to make His will " be done on earth as it is in Heaven ".

Surely no words of mine are needed to assure you of your welcome presence with us. For in addition to the bond that binds us together as American citizens, our solemn oath before the Court binds us together as brethren of the bar—lawyers and judges, charged with the primary duty of sustaining the honesty and integrity of American justice.

*Sermon delivered by the Right Reverend Msgr. Robert J. White, LL.B., J.C.D., Rear Admiral (CHC), USNR (Ret.), at the *Red Mass,* the Votive Mass of the Holy Spirit, in the Church of St. Charles Borromeo, Brooklyn, New York, September 19, 1956, under the auspices of The Catholic Lawyers' Guild of the Diocese of Brooklyn.—The kind permission of St. John's University School of Law, Brooklyn, N. Y., to print this text in full is herewith gratefully acknowledged. (Editor's note.)

On an occasion such as this it is well to remember that God, in the creation of the natural order, has ordained that man develop his talents and satisfy his wants in common effort with others in family, religious, business and civic life. Because of this, the right ordering of society rests upon Divine sanction. Surely they who bear the burdens of sustaining this order honestly and conscientiously merit God's benediction. Thus your daily labors in the law have a significance which far transcends particular litigation. Indeed, the labors of every lawyer and the decisions of every judge become an integral part of the woven tapestry of contemporary law. This tapestry will either betray disorder and confusion or reveal a logical and majestic pattern of justice. Only such a pattern can compel respect and confidence in the people that ours is an orderly Government "Under God and the law".

Surely the "Red Mass" is a salutary custom which calls us from the tense routine of daily cares to pray and meditate together in God's presence, and to seek His guidance in appraising the competing forces which strive to control the course of American Law. For the dominant forces will influence contemporary American History and, in the long run, may even decide the destiny of this nation.

Your presence here this morning reflects great credit upon you. For it is the nature of noble characters to seek to discover the essential needs of their times and to devote their talents to solving the problems they thus discover. In such a task we must always avoid the temptation to overstress the evils of our time. Such an approach—though dramatic—would deprive us of the vantage point of history where with calm perspective we can weigh the good and evil of the past and in the light of such knowledge chart the best future path for American Law.

The days of the American Revolution may seem to be in the distant past. Yet, it is really only a comparatively short span of history to the day when early Americans chose to build a confederacy which would rest upon the constitutional rock

of the dignity and worth of the individual endowed by his Creator with inalienable rights.

In the subsequent history of our government, no group has carried a greater burden of selfless and intelligent leadership than lawyers and judges. Nor was the growth of bench and bar without difficulties and opposition. For popular Post-Revolution hositility to all things British included distrust towards lawyers trained in the English common law. In contrast to the present solid position of trained lawyers as judges, it is interesting to read that in the Post-Revolutionary period, two of the three justices of the highest court of New Jersey were unschooled in the law. Only three of thirty-three justices of the Supreme Court and the Superior Court of Massachusetts were lawyers; and a blacksmith, a physician, and a farmer were numbered among the members of the Supreme Courts of New Hampshire and Rhode Island.

Our present well-trained judiciary and the educational and moral qualifications for admission to the bar reflect great credit upon the legal profession in America. Moreover, lawyers have reinforced their vital and generous contribution to government at every level,—local, state and national,—by maintaining high standards of professional conduct. Consequently, it is only natural that the American people now look to the members of your profession for counsel and guidance in the novel, complex, and almost overwhelming problems facing American law and government.

The demands upon law, as upon life, are ever changing. Indeed, our vast expansion, wealth and scientific progress have added tremendous burdens to legislation and to governmental administration. The challenges to our ability to solve these massive problems, which are further complicated by our world commitments, call for the intelligent and unified efforts of all our citizenry. We must moreover reluctantly agree with thoughtful contemporary observers of American life who express a deep concern over the widespread feeling of weariness, disappointment, and frustration among our people because

successive promises of a near millennium have failed them so dismally. As victory in war which promised peace became instead an uncertain end of armed conflict with continued staggering military burdens, so other promised goals have proved only mirages in the long quest for peace and security. The promise that wider educational opportunities would bring about a more intelligent and more tolerant generation has recently been rudely shattered. The treasonable ingratitude of some of the so-called " best educated " has exploded the theory that education, apart from integrity of character, can even be trusted. The great strides forward in the relations between capital and labor—a magnificent progress through enlightened legislation—have failed to convince extremists on either side. Some would even now revert to the savage instrument of power rather than to the norm of justice in the settlement of economic controversies. Is it any wonder that the American public evidences a certain weariness and frustration in the betrayal of their hopes?

However, we who are sworn to uphold law and government can never surrender to such defeatism. Rather it is our stern duty to re-study all trends which result in the impact of law upon American life. Where has law failed? What are the reasons for such failures? How can the law be of greater usefulness? And not the least important—What are the proper limits to the functions of law and government? For no greater error could be compounded than the popular belief that pyramiding laws can successfully shift duties to the state which by their very nature are personal and must be fulfilled by the family and by the individual. We now see mounting burdens upon government in maintaining prisons, youth reformatories and mental institutions. Such burdens are due in a large measure to the evil results of the law's tampering with God's decree of a single marriage and condoning the evasion of the moral duty of family support and discipline.

The scope of our study should be broader than laws, judicial decisions, and legal writings. It should include as well a

study of forces, such as the press, the novel, and the drama, which mold public opinion and thus indirectly influence the courts. From such a study it is apparent that the common characteristic of these forces is "*confusion*". For example one need examine only briefly our legal writings of the last quarter century to recognize basic contradictions which result in disorder and confusion.

To be sure the stage had been set earlier by the the forces of revolutionary philosophy which had risen up to reject God and to banish His natural law. Having rejected God as the Supreme Lawgiver, these new schools would consequently reject the eternal and immutable and strip the law of any moral content. Man would no longer be "man in the image of God", but rather "man in the self-sufficient image of man himself."

When legal thinkers thus rejected or ignored the primary definition of the nature of man and his relation to God and to Government they abandoned the path of truth. Instead of following a true compass, they now relied upon human judgement alone and quickly found themselves lost in a maze of contradictions and confusion. Having rejected primary ends, they now pursued secondary ends as first goals. Drugged by the opium of materialism these false teachers now raised power, pleasure, and security as the primary ends of law and government. For them, law became "a pragmatic experimentation" or "a blind evolutionary process" or "the process of expressing the dominant 'mores' of a majority." "Realism" and "Relativism" became magic terms, though answers could not be found to the questions, "What are the basic principles of realism?" "To what is 'relativism' relative?" Even courts added to the confused thinking by subscribing in vague dictums to the new creed that "nothing is more certain in modern society than the principle that there are no absolutes —all our concepts are only relative." Though apparently different, these new schools had in reality a common characteristic, the subordination of the individual's rights to a tyrant majority in the name of the omnipotent state. Among the

bolder advocates of such fundamental error, one even declared that the American people could not enjoy democracy if the Supreme Court, armed with the Bill of Rights, could forbid the majority to do certain things.

One can hardly be surprised at the logical end of such illogic, when a former Army advisor seriously proposes an atheistic and savage measure—that Americans in military combat be given tablets for suicide—thus completing the evil cycle, that not only military service and the physical body, but the eternal salvation of the citizen's soul, belongs to the omnipotent state.

In no field has the confusion of legal thinking been more harmful than in the vital areas of mass communication—the press, radio, television, motion picture, drama, and novel. When an appellate court reverses the sound judgement of a presiding justice to exclude the press and public from revolting testimony of immorality and degeneracy, this confused court deserves rebuke for its failure to uphold the historic positive function of the law to support public morals. When the press, emboldened by such court decisions, seeks profits as purveyors of filth and degeneracy, then the press itself unwittingly becomes the greatest enemy of "the freedom of the press."

Indeed it is not surprising to see motion picture producers, under the cloak of such unwarranted judicial extension of constitutional freedom, venture more boldly every day in the portrayal of obscenity and vice. This seeping pollution of immorality finds expression in an article "All is Confusion" by a noted dramatic critic who states that producers are still eager to invest fifty to seventy-five thousand dollars on a play that is trash or *elegant* pornography. When confused courts thus sanction license for liberty, it is not surprising that popular respect for those courts is weakened as is indeed respect for law itself.

We are now witnessing a historical series of attacks upon the United States Supreme Court. Temperate criticism of Su-

preme Court decisions affecting the historic balance of powers is understandable. Moreover temperate criticism of decisions affecting exclusiveness of jurisdiction in the field of sedition, or the areas of sensitivity affecting an individual's right to government employment is understandable.

However, it is an entirely different situation, when after a Supreme Court decision based upon the moral proposition of man's equality, *violence* becomes the instrument of criticism. To be sure, we should have patience and charity in a sympathetic understanding of the difficulties in the accommodation of deep traditions to fundamental change. However, the challenge of disobedience through violence, condoned by a public official or state, cannot be tolerated, for it is gravely sinister in its implications. For if willing obedience to fundamental laws is to be decided by personal or group acceptance or rejection, then the reign of law in this nation may well be domed to final destruction.

However, the character of the American people—their great generosity, fortitude, patience, and courage in even more tragic crises—gives us reassurance against such a disaster.

Indeed there are most hopeful signs upon the horizon. The widespread dissatisfaction with the failure of the promises of materialism seems to have awakened a spiritual longing in men for a revival of faith and a restoration of the moral order. At last men realize that they cannot satisfy their longing for truth with the enervating conflicts of confusion. Such a realization itself is hopeful, and may well be the first step from confusion to faith and order. What is the significance of the contemporary increase in religious interest—the building of churches, the extension of charities, the great growth of religious discussion and huge publication of religious books? For our purposes, the answer may be found in the words of a great American lawyer and I quote: " Perhaps our people are emerging from the confusion to realize that any forecast of our future may rest on the values that we, the people, attach to the imponderables—The sense of personal responsibility and

moral conviction must ever be the chief guarantee of the stability of our government." His statement was made in a notable conference of lawyers, judges, and teachers of law. Though many of these men had been trained in atheistic and agnostic schools of legal thought, they were now convinced that they had become lost in the delusive paths of man's self-sufficiency and sorely needed Divine guidance to find the road to order and truth. With a revealing frankness, they now made a public profession of faith in the basic definition of law and government. For they now agree that the purposes of government is *the good of the individual;* that constitutionalism is a *moral precept;* that *goodness* must always be the final criterion in resolving the problems of law and government.

With sound reason we hope that the old cycle, which began with the rejection of God and His Natural Law and resulted in confusion and disorder, may be coming to an end. We humbly pray that the new cycle evident in a religious awakening may restore faith in God and His Natural Law, which alone can dispel confusion, and bring about the divine blessing of the tranquility of order in the life, in the law, and in the government of this nation we love.

Across the centuries we hear again the ancient mandate of Almighty God to Joshua—a mandate authentic for our day and binding upon each one of us:

> "Take courage and be valiant; that thou mayest observe and do all the law. Turn not from it to the right hand or to the left that thou mayest understand all things which thou doest. Let not the book of this law depart from thy mouth. But thou shalt meditate on it day and night that thou mayest observe and do all things that are written in it. Then shalt thou direct thy way and understand it.
>
> "Behold I command Thee, take courage and be strong. Fear not and be not dismayed because the Lord thy God is with thee in all things whatsoever and wherever thou shalt be."

AN IMPORTANT RULE OF LAW

WHILE all the Rules of Law have some importance in the interpretation of law, there is no doubt at all that the immediate advantage of some of these Rules is apparent. This advantage is not only the intrinsic worth of the Rule but it is also due to its wide spread acceptance. One of such Rules is the dual statement that anything disadvantageous should be minimized in favor of liberty and that anything favorable should be extended provided it does not go beyond the accepted meaning of terms. This is Rule 15: *Odia restringi et favores convenit ampliari.*

The basis of Rule 15 is the natural and reasonable idea that no one is expected to assume more obligations than necessary and secondly that the benevolence of the legislator is properly presumed to extend to the full amplitude of his concession.

Yet, here as elsewhere in law, the exact meaning of terminology must be kept in mind. Apparent meaning of terms must be measured against their acceptance in jurisprudence. Often enough the common and every-day meaning of terms will correspond to their use in law but this is not always the case and where technical meanings of terms intervene, the latter must be preferred. This is no real contradiction to the law of canon 49 [1] since in this canon the true and proper meaning of terms is demanded. Naturally in matters of law, the legal meaning of terms is preferred when such meanings are in opposition to meanings found, for instance, in the dictionary or in common use.

An examination of the text of Rule 15 reveals that it can conveniently be discussed under several headings: its explanation; the pertinent canons; its application to the pertinent canons; and its application to other canons.

[1] *Rescripta intelligenda sunt secundum propriam verborum significationem et communem loquendi usum, ...*

A. The Explanation of the Rule

Rule 15 is one of the most interesting of the Rules of Law of Pope Boniface VIII. It is also one of the most frequently cited Rules and at the same time one of the most difficult Rules to apply. The range of applicability of Rule 15 may in a practical sense cover the whole field of Canon Law although its citation in the footnotes to the Code of Canon Law is more frequent to the fifth book than to the first.[2] Some of these canons in the fifth book will be studied to show how the law in the first book must be interpreted.

Rule 15 is based principally on penal Roman Law. There are three texts which can be adduced to illustrate the source of Rule 15.

The first text of Roman Law is Rule 155. The jurist Paul says that in penal cases a milder interpretation must be adopted.[3] This Rule is applicable whenever any penalty is involved. This does not mean, however, that penalties are not to be applied as they were intended by the legislator. There is no desire here to curtail the rights of the legislator nor to question the wisdom of his law nor even the justice of his penal sanctions. What is intended by Rule 155 is the indication that where discretion is permitted, a milder application of penal law must be made. Frequently discretion will result not so much from a concession of the legislator as from the obligation to consider a doubt or dimunition of guilt as worthy of benign treatment. This is aptly contained in Rule 56 of Roman Law which is the second text to be reviewed. The jurist Gaius states that in matters of doubt a mild view must be preferred.[4] It is true that this Rule can be applied to all law where a doubt may arise. It has, however, a definite and clear applicability to penal law. It is, therefore, placed among the sources of Rule 15 of Pope Boniface VIII.

[2] Cf. footnotes to cc. 2219, § 1; 2228; 2242, § 1; 2245, §4; 2246, § 2; 2255, § 2; 2258, § 2; 2293, § 4; 2296, § 2.

[3] D. 50, 17, 155. *In poenalibus causis benignius interpretandum est.*

[4] D. 50, 17, 56. *Semper in dubiis benigniora praeferenda sunt.*

The third and last text of Roman Law to be examined is the statement of the jurist Hermogenian. This text advises that penalties should be mitigated rather than increased.[5] It is to be noted here just as it was indicated above under Rule 155 that where discretion is not permitted in the interpretation of penal law no mitigation of penalties is allowed. Where, however, such discretion is permitted, penalties must be mitigated rather than increased. In no event is an increase of the penalty to be made merely as the result of interpretation. This is, of course, an obvious conclusion for what doubt may arise will come from an uncertainty of guilt or from the mere probability of guilt. There will be a doubt whether any penalty at all should be imposed in these circumstances. Roman Law will sustain, in the texts adduced, even the complete refusal to apply any penalty.[6]

Rule 15 in Canon Law requires considerable explanation before it can be applied properly. The chief difficulty is the determination when something unfavorable is found in the law. Aside from penal law this is not always obvious. There are numerous cases where a favor is granted in law with the concomitant loss of gain as contemplated by the same law.[7] It requires definite and clear knowledge of law in all these cases in order to use Rule 15 in the interpretation of Canon Law.

Rule 15 has two parts: *odia* are to be restricted;[8] favors are to be extended. The term *odia* can have a variety of meanings. It can be a penalty, a sacrifice of gain, a surrender

[5] D. 48, 19, 42. *Interpretatione legum poenae molliendae sunt potiusquam exasperandae.*

[6] Bartoccetti, *Le Regole Canoniche Di Diritto,* (Roma, 1939), pp. 141–142 cites other texts of Roman Law which can be profitably studied. Msgr. Bartoccetti has republished this book in Latin with some revisions. (*De Regulis Juris Canonici,* Roma, 1955). Since the earlier edition is better known, citation is made from this edition.

[7] E.g. cc. 1355; 1356; 1429; 1482; 1502.

[8] There is no exact equivalent of the general term *odia* as used in Rule 15. Whenever an equivalent term can be found, e.g. *penalties,* it will be used in the text.

of rights or anyone of a number of items. In all these items, however, something unfavorable is understood. Sometimes this unfavorable idea is found separately as in penal law; sometimes the same idea is found together with the notion of gain or profit by some one else.[9] It is precisely in the latter case that difficulties arise. Favors, on the other hand, are more clearly recognizable and should offer less difficulty.

The two parts of Rule 15 will be first considered separately and, later, discussed together when the two parts are found in the same law.

The restriction of *odia* is based on Roman Law. There it was seen to apply principally to penalties. The same application is found in Canon Law. A penalty is always something unfavorable. Its application, then, in the sense of Rule 15 must always be restrictive. It is never allowed to transfer one established penalty to another crime[10] except in the case of concurrence in crime. But this is not really an exception to Rule 15 as concurrence in crime is actually cooperation in the same actionable crime. The meaning, therefore, of Rule 15 in regard to penalties is clear and offers no real difficulty of interpretation.

Odia, however, includes more than penalties. An exception to the provisions of law either by rescript or by privilege is an *odium* in regard to that law. The reason for this statement is that the common good is protected by the common law. Anything which may weaken this protection is considered unfavorable to the common good. The force of this reason is not to be exaggerated. Rescripts and privileges, when opposed to the law, have already been adjudged by their grantor of insufficient force to weaken the common good appreciably. Nevertheless, their general status remains unfavorable. Hence, they fall under the first part of Rule 15.

It may at first sight seem odd that a privilege should be

[9] Cf. cc. 1482; 1502.

[10] Cf. c. 2219, § 3.

considered something unfavorable in law. But it must be remembered that a privilege contrary to the law is an injury to the law itself. It removes one from the general obligation of the law involved and thereby weakens the protection of the common good. Privileges outside of the law are not similarly characterized.

The force of the first part of Rule 15 is likewise found in the interpretation of terms. As all know, terms frequently have a wide and narrow extension or, in other words, they may have a strict and broad interpretation. Whenever a term may receive one or the other interpretation, it is possible that the least extension of the term will be found in the *odia,* the greatest extention found in favors. Several examples will help to understand this.

The term " cleric " really includes all who have received tonsure.[11] This is its widest extension. A narrow extension would exclude those who have episcopal consecration or who enjoy some special status, dignity or office. These would be Bishops, religious, canons, prelates, etc. When an *odium* appears in the law, the term " cleric " would be used in its narrow extension and thus unfavorable items in the law would not be encountered by others. Another example is the term " people ". Laymen and clerics both are included in this term. Nevertheless if a penalty is incurred and this term is used in the infliction of the penalty, laymen would be liable not clerics. The force of this term was already carefully determined in a decretal of Pope Boniface VIII.[12] In this decretal, the Pontiff said that if clerics are interdicted no penalty is imposed on the people unless specific mention is made of this extension. This decretal supports the narrow extension of the term " people ".

A third example illustrating an *odium* to be restricted can be found in the term " territory ". In a territory some places

[11] Cf. c. 111, § 2.

[12] C. 16, *de sententia excommunicationis, suspensionis et interdicti,* V, in VI.

are exempt by privilege. Hence, these places would not be subject to an *odium* laid down in a penalty.[13]

From the preceding paragraphs it might be supposed that *odia* were always interpreted strictly so that every exception to the law was considered injurious. Such, however, is not the case. Many failures of this part of Rule 15 were detected in the course of time. All the earlier commentators devoted considerable time and space to these failures.[14] It is not necessary to expatiate on all these points. One or two of these items brought into discussion will suffice. Consideration will be limited to rescripts and privileges.

If a privilege is granted in favor of worship and the welfare of souls, it receives a broad interpretation. This was determined in a decretal of Pope Honorius III.[15] In this decretal, the Pontiff says that whatever is recognized as favorable to worship must receive a favorable interpretation.[16] Suarez understands this interpretation to include favors conceded to churches, monasteries, hospitals, etc.[17]

Another important but perhaps only apparent exception to the rigid interpretation of the first part of Rule 15 is found in a *motu proprio* rescript. This exception is based on a decretal of Pope Boniface VIII.[18] In this decretal, the Pope states that a rescript *motu proprio* is to receive a wide interpretation.[19] To understand this decretal properly it is necessary to mention that the statement of Pope Boniface VIII concerned

[13] Reiffenstuel, *Jus Canonicum Universum: Vol. VII, De Regulis Juris,* R. XV, no. 19.

[14] Cf. Reiffenstuel, *o.c.,* R. XV, no. 20–24.

[15] C. 30, X, *de privilegiis et excessibus privilegiatorum,* V, 30.

[16] In his quae ad cultum divinum facere dignoscuntur, non maligna, sed benigna esset potius interpretatio facienda.

[17] *Tractatus de Legibus ac Deo Legislatore,* (Neapoli, 1872), lib. VIII, c. 27, n. 7.

[18] C. 24, *de praebendis et dignitatibus,* III, 4 in VI.

[19] . . . gratiam huiusmodi si motu proprio fecerimus, ut tunc fiat interpretatio plenissima in eadem.

the concession of a favor to a cleric attached to a church where several vacant benefices were had. If the concession did not specify which benefice was granted, the widest interpretation of the favor could be realized and the best benefice considered as granted. From this explanation, it will be readily seen that no real exception is made to the force of Rule 15. Some exception is apparent, but the actual force of this Rule is not impaired.

Reiffenstuel is inclined to make another exception in regard to penal law.[20] He says in effect that a penalty or a disability can be admitted as far as cooperation in crime is concerned. But to apply this opinion in every case is contrary to the spirit of Canon Law. Reiffenstuel himself admits this in his commentary on the decretals.[21]

Favor is understood in the second part of Rule 15. This includes any kind of profitable concession. These concessions need not be material gain. Any concession which enhances the dignity, importance or safety of the recipient is a favor. The term "favor" can be taken as the antithesis of *odium*. Yet it must be kept in mind that whenever a concession has some relationship with a law, a favor cannot be considered entirely apart from the law. Caution must be exercised here.

A favor as understood in Rule 15 can be found either in the law itself or outside of the law. If the favor is found in the latter way, Rule 15 can be applied directly and with wide extension provided no harm is done to the rights of a society or any member of a society. The minimum loss which either the common good or a member of a society may suffer in favors conceded outside of the law may be disregarded. This must be accepted as true for frequently a favor can be realized only at the cost of some sacrifice on the part of another. The minimum loss or sacrifice of rights must be understood as already considered as negligible by the grantor of the favor.[22] Beyond

[20] *O.c.*, vol. VII, R. XV, no. 23.

[21] *O.c.*, lib. I, tit. II, § 17, n. 427.

[22] But cf. c. 46 on rescripts.

this minimum of loss or sacrifice of rights, a favor cannot be extended without a derogatory clause in the rescript itself. Hence, it is not true that a favor, even outside the law, must always be extended or that Rule 15 can be applied at all times and in all circumstances.

The chief difficulty occurs in applying Rule 15 in laws which contain both a favor and an *odium*. It is just as erroneous to disregard the *odium* as it is to overstress the unfavorable element in the law. In some way a definite conclusion must be arrived at so that the correct interpretation of the law can be obtained. The following remarks may be of assistance.

The first rule to apply in order to discover whether an *odium* or a favor is contained in the law is to examine faithfully the text of the law. If the text is divisible so that some independence is found in the parts of the law, it is probable that little difficulty will be found in interpreting the law.[23] Every law, however, is not divisible. What can be done to determine whether a law is favorable or unfavorable when the law itself is not divisible? Sanchez [24] offers the sanest rule to follow. He says that the intention of the legislator must be considered. If the legislator primarily intended to confer a favor, the law is favorable; if the legislator primarily intended to penalize, the law is unfavorable. This proposition may seem too indefinite to be of any practical use. But a study of the decretals upon which this proposition is made will show how really practical it is.

The first decretal to be studied is a decretal of Pope Boniface VIII.[25] In this decretal, it is determined that the fruits of a vacant benefice are allotted to the Bishop even contrary to privileges, customs and statutes. Thus, it is seen that the principal intention of the grantor is to concede a favor. This

[23] Cf. Reiffenstuel, *o.c.*, Vol. VII, R. XV, no. 3.

[24] *Disputationum de Sancto Matrimonii Sacramento Libri Decem*, (Venetiis, 1612), lib, I, disp. 1, no. 4.

[25] C. 10, *de rescriptis*, I, 3 in VI.

favor is not diminished by the fact that some loss by others is thus entailed. The decretal of Pope Boniface VIII is a clear demonstration that the intention of the legislator is the controlling factor when a doubt in the law exists.

A decretal of Pope Gregory X can also be adduced to show how the favor in a law is determined by the examination of the intention of the legislator. This decretal is part of the acts of the Council of Lyons.[26] In this decretal, excommunication is threatened against all who hinder the freedom of elections. The point to keep in mind is that the personal freedom of electors is guaranteed by the legislator. This is the favor intended by him. The penalty contained in the law is not the primary purpose of the law.

A decretal of Pope Alexander III can also be studied.[27] This decretal emphasizes the protection from bodily harm given to the clerical or religious state. The decretal contains a penalty. But here, again, the primary intention is not to punish but to afford protection.

Sanchez [28] is concerned with a possible misunderstanding of his opinion. The same misunderstanding can occur today. The opinion of Sanchez must not be understood as meaning that if the law is primarily favorable, the concession can be extended and if the law is primarily unfavorable it must be restricted. Sanchez takes it for granted that if these suppositions are realized, the conclusions regarding favor and *odium* will follow. What Sanchez means and is careful to point out is that if the favor in the law cannot be distinguished from the *odium,* the legislator's primary intention must be consulted.

Perhaps two canons in the Code of Canon Law will assist in arriving at a clearer understanding of the opinion of Sanchez.

Canon 119 is the law which protects clerics from bodily harm.[29] Canon 2343 is the law which penalizes infractions of

[26] C. 12, *de electione et electi potestate,* I, 6 in VI.

[27] C. 5, X, *de sententia excommunicationis,* V, 39.

[28] *O.c., l.c.*

[29] *Omnes fideles debent clericis . . . si quando clericis realem iniuriam intulerint.*

canon 119.[30] The first canon mentioned is obviously a favorable law; the second is just as obviously a law containing an *odium*. The first law is capable of extensive interpretation; the second law must be interpreted strictly. As long as these two laws are read and considered separately, no difficulty will arise. The opinion of Sanchez could not be used as a supporting argument in their interpretation.

But should canons 119 and 2343 be considered together as a law protecting clerics with a penal sanction, it will be seen that both a favor and an *odium* are contained in the same law. Which interpretation must be followed? Extensive or restrictive? It is not obvious from the text of the combined canons which interpretation must be followed. The only method to follow to arrive at the correct interpretation is to study the primary intention of the legislator. This should lead to the conclusion that protection and not penalty is the primary purpose of the legislator. Therefore, the combined law of canons 119 and 2343 is subject to extensive interpretation according to the opinion of Sanchez.

Perhaps it will be objected that if the opinion of Sanchez is followed, penalties themselves could be extended. This objection would be valid only if the penal law be entirely separated from the law which it sanctions. This is done in the Code of Canon Law but its development is not thorough in the history of law. Many decretals in the penal section of *Corpus Juris Canonici* actually contain a favor with a penalty for disregarding this favor.[31] It is, of course, easier to interpret Canon Law today but the rule of Sanchez retains its validity and can at times be used.

[30] *Qui in personam aliorum clericorum . . . subiaceat ipso facto excommunicationi Ordinario proprio reservatae.*

[31] E.g., X, *de privilegiis et excessibus privilegiatorum*, V, 33; X, *de sententia excommunicationis*, V, 39; *de privilegiis*, V, 7 in VI; *de sententia excommunicationis, suspensionis et interdicti*, V, 11 in VI; Cf. also X, *de immunitate ecclesiarum, coemeterii et rerum ad eas pertinentium*, III, 49; X, *ne clerici vel monachi saecularibus negotiis se immisceant*, III, 50; *ne clerici vel monarchi saecularibus negotiis se immisceant*, III, 24 in VI.

Reiffenstuel says that if the examination of the intention of the legislator does not remove the uncertainty regarding the favorable or unfavorable interpretation of law, the law itself must ultimately be regarded as favorable.[32] This opinion can be accepted for the legislator is not presumed to penalize unless this can be demonstrated.

B. The Pertinent Canons

Rule 15 is cited in the footnotes to three canons of the first book of the Code of Canon Law.

1) Can. 19. *Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi.*

Canon 19 determines which laws are to be interpreted strictly.

The first group of laws to be interpreted strictly are penal laws. All kinds of penal laws are included.[33] As far as canon 19 is concerned, it is immaterial whether penal laws include censures or vindictive penalties. Even laws which impose merely penances are included in canon 19. Moreover, this canon lays down a principle which must be observed even if penalties are found not in the universal but in particular law. Hence, penal diocesan statutes must be interpreted according to this canon. A judge is not free to observe or reject the law of canon 19. He may in certain circumstances mitigate a penalty but he cannot extend or normally increase a penalty.[34] No more need be said regarding penalties. The law is clear and its interpretation constant.

Canon 19 also says a strict interpretation must be made whenever the free exercise of rights is curtailed. This is a

[32] *O.c.*, vol. VII, R. XV, no. 5.

[33] Cf. Cicognani, *Commentarium ad Librum I Codicis*, (Romae, 1925), p. 131.

[34] Canon 2219, § 1, § 3.

rather inclusive statement under which many items could be placed. It will be sufficient, however, to note several points.

Invalidating laws certainly curtail free exercise of rights. Hence, laws which limit free consent to contracts such as marriage or religious profession certainly must be judged by the force of canon 19. Laws regarding the prohibition of books, the rights of the Bishop to visit his diocese or curtailing the rights of a pastor are all laws which must be interpreted strictly.

The limiting of free exercise of rights, as understood in canon 19, means first of all the exercise of rights as conceded in Canon Law. But, all law is included whether natural or positive. The limiting, however, of which this canon speaks must come from Canon Law. No other law which might limit freedom is contemplated in canon 19. It should, however, be remembered that Canon Law adopts as its own some civil laws, e.g., contracts.[35]

The third item in canon 19 considers an exception to the law. This exception must be interpreted strictly. It is tempting to consider all dispensations as exceptions to the law and thus interpret them strictly. Such interpretation is valid according to canon 85 but a dispensation is not really understood in canon 19. What is meant there is an exception to the law which is contained in the law itself. A general indult will be an example. Such an example is found in the regional regulation for the conferral of a parish.[36] Another example will be found where the list of holydays is different from the list stated in canon 1247.[37] Individual dispensations do not fall under canon 19.[38]

[35] Cf. canon 1529: cf. also cc. 1080; 1508.

[36] Cf. canon 459, § 4.

[37] Canon 1247, § 3.

[38] Michiels, *Normae Generales Juris Canonici,* (Lublin, 1929), vol. I, pp. 449–451.

Canon 19 provides only for laws which demand a strict interpretation. Nothing is said of other laws. By inference such laws receive a broad interpretation.

2) Can. 50. *In dubio, rescripta quae ad lites referuntur, vel iura aliis quaesita laedunt, vel adversantur legi in commodum privatorum, vel denique impetrata fuerunt ad beneficii ecclesiastici assecutionem, strictam interpretationem recipiunt; cetera omnia latam.*

Canon 50 has no reference whatever to rescripts the terms of which are not subject to doubt.

If a doubt, however, is found in a rescript, canon 50 contributes a list of items which demand strict interpretation.

The first of these items is a rescript which pertains to litigation. Anything at all which may be so classified, e.g. assigning of judges, or delegation of power, etc., will be included.[39] Michiels is inclined to believe that canon 50 refers principally to the assigning of delegated judges and their operation.[40] But this need not be the only way in which a rescript may refer to litigation and, therefore, be strictly interpreted.

The second item of canon 50 concerns acquired rights. This item must be carefully considered for these rights possess a favored position in the law.[41] According to canon 46, a derogatory clause must be found even in a *motu proprio* rescript before an acquired right must be sacrificed. Hence, the doubt will be found in regard to this clause for without this clause such a rescript will not be sustained.

If, however, a derogatory clause appears in the rescript but its extension is doubtful, the least possible sacrifice of acquired rights must be made.

The third item of canon 50 refers to privileges contrary to the law and to dispensations. It must be noted, however, that

[39] Michiels, *o.c.*, vol. II, p. 259.

[40] *O.c., l.c.*

[41] Cf. cc. 4; 46.

privileges granted for the common good will not be controlled by canon 50.

The last item of canon 50 considers a rescript which has been obtained to acquire an ecclesiastical benefice. This is an old restriction found in a decretal of Pope Boniface VIII.[42] The Pontiff characterizes the petition for a benefice as ambitious and states that the rescript in answer to this petition must be restricted.[43] Michiels adds another reason to the ambition regretted by Pope Boniface VIII. He says rescripts of this kind derogate from the right of those who normally possess the power to confer the benefice.[44] This is a valid reason but it can be reduced to the third item of canon 50. Cicognani suggests the reason that others failing to receive the benefice will be offended.[45] This, too, is a valid reason why a rescript granting a benefice should be interpreted strictly.

Outside of the four items mentioned above, all other rescripts which have doubtful terms must be broadly interpreted.

3) Can. 68. *In dubio privilegia interpretanda sunt ad normam can. 50; sed ea semper adhibenda interpretatio ut privilegio aucti aliquam ex indulgentia concedentis videantur gratiam consecuti.*

As mentioned above in regard to rescripts, canon 68 has no meaning for privileges the terms of which are not doubtful.

The general law for the interpretation of privileges parallels the interpretation of rescripts. One item, however, is proper to privileges. No interpretation of the doubtful terms of a privilege is legitimate unless some concession is admitted. This statement of canon 68 is founded upon a decretal of Pope Honorius III. In this decretal, the last part of which is taken

[42] C. 4, *de praebendis et dignitatibus,* III, 4 in VI.

[43] *Quamvis plenissima sit alias in beneficiis interpretatio facienda: litterae tamen super obtinendis beneficiis impetratae debent, quum sint ambitiosae, restringi.*

[44] *O.c.,* vol. II, p. 261.

[45] *O.c.,* p. 243.

almost verbatim into canon 68, the Pontiff discusses the use of a portable altar. The beneficiaries of this privilege were unduly hindered in the exercise of their right and Pope Honorius III criticizes such restraint.[46] Privileges always carry with them some special concession and it is wrong so to hinder the use of a privilege that its concession is useless.[47]

C. The Application of Rule 15 to the Pertinent Canons

1) *The application to canon 19.*

Canon 19, as has been observed, does not directly indicate how all laws are to be observed and interpreted. This canon states which laws are to be interpreted strictly but it says nothing about other laws. Hence, the full force of Rule 15 cannot be applied directly to canon 19. Rule 15, in so far as it concerns *odia,* can be directly applied in the interpretation of canon 19. The same direct application cannot be made to other laws not mentioned in canon 19. Inferentially, however, laws not mentioned in canon 19 can be interpreted by the application of the favorable aspect of Rule 15. *Favores convenit ampliari.*

Rule 15, then, is directly and immediately applicable whenever a penal law is involved or the free exercise of rights is curtailed or whenever the law itself contains an exception to its normal force and obligation.

In canon 19, Rule 15 cannot be applied unless a comparison is made between the Rule and the law. The canon itself considers only the law. It does not here apply to faculties, privileges and dispensations conceded contrary to the law. These items are indeed exceptions to the law but they are not found in the law itself. It is true that Rule 15 can, at least by analogy, be applied to many of these concessions but this application is not found relative to canon 19.

Rule 15 is applicable whenever any kind of restraint is put upon the free exercise of rights. The obvious application

[46] C., X, *de privilegiis et excessibus privilegiatorum,* V, 33.

[47] Roelker, *The Principles of Privilege,* (Washington, 1924), p. 76.

of Rule 15 in this matter will be in regard to matrimonial impediments. All kinds of impediments will be included, not merely diriment impediments. Even the prohibition to marry found in canon 1039, § 1 is included.[48] Another application just as obvious of Rule 15 to canon 19 is found in the impediments to entering the religious state.[49] Other examples can be found in the canons which legislate on irregularities.[50]

It is immaterial whether the act contrary to the law be invalid or merely illicit. As long as the free exercise of rights is limited, the law which states this limitation must be interpreted strictly. Hence, Rule 15 is applied directly.

2) *The application to canon 50.*

Both parts of Rule 15 are directly applicable to canon 50. This canon is precise in determining which rescripts, in cases of doubt, are to be interpreted strictly. There is no need for inference to discover which rescripts receive a wide interpretation. This, too, is stated clearly in canon 50. Any rescript not mentioned in the precise list of canon 50 must, in case of doubt, be widely interpreted.

The first part of Rule 15 is directly and immediately applied to the first part of canon 50. The second part of Rule 15 is directly and immediately applied to the second part of canon 50.

There will normally be no difficulty in making this application. However, a word of caution should be repeated. Canon 50, and, therefore Rule 15 cannot be used unless the rescript contains doubtful terms. If no doubt at all is discovered, the pertinent law is canon 49.[51]

Attention should also be called to the terms of canon 50 in regard to the acquisition of an ecclesiastical benefice.[52] Canon

[48] § 1 *Ordinarii locorum . . . vetare possunt matrimonia in casu peculiari.*

[49] Cf. canon 542.

[50] Cf. cc. 984–985; 987.

[51] *Rescripta intelligenda sunt secundum propriam verborum significationem et communem loquendi usum.*

[52] *. . . impetrata fuerunt ad beneficii ecclesiastici assecutionem.*

50 considers the acquisition of a benefice in answer to a petition as an *odium*. In this sense, the first part of Rule 15 is applied to canon 50. If, however, the benefice is not granted in a rescript as a reply to a petition but is conceded in the normal way and by the usual and competent Superior, the first part of Rule 15 is not applied. This mode of concession is not contemplated in canon 50.

3) *The application to canon 68.*

Rule 15 is only partially applied to canon 68. In cases of doubt, privileges are to be interpreted in the manner of doubtful rescripts. This is the fundamental law and in so far as this idea is concerned Rule 15 is directly and immediately applied.

A privilege, however, must always be interpreted as containing a favor. Hence, if the privilege should fall in the categories enumerated in canon 50, some way must be found to permit the privilege to be operative. It may happen that the minimum use of a privilege is all that can be considered as conceded by the grantor. But this much, at least, must be admitted and recognized.

The first part, then, of Rule 15 in the sense of canon 68 is not always completely applied to privileges. Whenever the doubtful privilege is to be interpreted according to canon 50, the full force of Rule 15 may not be at hand. Some of its force decreases the operative value of a privilege but some concession will and must remain.

The second part of Rule 15 is not directly applicable at all to canon 68. There is no indication at all in this canon that favors should be extended. The text of this canon does not provide for this extension. It considers merely the minimum value of a privilege when it is in conflict with one of the items mentioned in canon 50.[53] Inferentially, however, it can be said that Rule 15 would suggest that no unreasonable restraints be put upon the use of a privilege. After all, a privi-

[53] . . . *sed ea semper adhibenda interpretatio ut privilegio aucti aliquam ex indulgentia concedentis videantur gratiam consecuti.*

lege does concede something of a special right and this should be recognized. No one should interfere with this special right unless there is sufficient cause at hand.[54]

D. The Application of Rule 15 to Other Canons

Rule 15 can be applied to the presumption of the territoriality of a law as found in canon 8, § 2.[55] Rule 15 can also be applied to particular laws in regard to travellers as indicated in canon 14, § 1, 2°.[56] In these two laws the *odium* to be restricted is the obligation to obey the law. Freedom, therefore, is asserted for travellers away from their home or territory unless the *odium* either of a personal law or a law of public order is involved.

Rule 15 can also be applied to customs. This is indicated in canon 27, § 1.[57] A custom contrary to the law is an *odium* which should be restricted. Rule 15 is also applied to the computation of time in canon 35. There the *odium* is the loss of rights through ignorance or inability to act.[58]

Rule 15 is of importance in the interpretation of canon 46. There it is stated that even *motu proprio* rescripts will not be valid if granted to one with a canonical disability or granted contrary to legitimate custom or statute or acquired right unless a derogatory clause is found in the rescript itself.[59] Hence, Rule 15 cannot be immediately applied to rescripts of favor whenever a particular law, custom or acquired right would

[54] Some auxiliary force in interpreting canons 19; 50; 68 can be found in other Rules of Law not mentioned in the footnotes of the Code. These are Rules 2; 3; 6; 10; 11; 17; 18; 22; 23; 36; 49; 57; 65; 87.

[55] *Lex non praesumitur personalis, sed territorialis, nisi aliud constet.*

[56] *Peregrini: § 1, 2° neque legibus* [*adstringuntur*] *territorii in quo versantur, iis exceptis quae ordini publico consulunt.*

[57] *. . . neque iuri eccleasiastico praeiudicium* [*consuetudo*] *affert.*

[58] *Tempus utile illud intelligitur quod . . . ut ignoranti aut agere non valenti non currat.*

[59] *Rescripta . . . non sustinentur, nisi expressa derogatoria clausula rescripto apponatur.*

have to be sacrificed. Such sacrifice can be demanded but it must be expressly stated in the rescript. If this disposition is made, Rule 15 can be applied. It should be noted that canon 46 does not apply to rescripts contrary to the universal law. It does, however, apply to disability in common law.

Rule 15 can also be applied to canon 49. The *odium* to be restricted here is an alleged parallel concession without a parallel grant.[60]

Rule 15 is also applicable in the interpretation of canon 61.[61] The *odium* to be restricted here is the necessity to apply again for a rescript if the Apostolic See or the diocese should become vacant.

Rule 15 can also be applied to the communication of privileges. Complete communication resulting in independent rights is considered an *odium.* Therefore, a privilege which has not been conceded directly, perpetually and without regard to place, thing or person cannot be communicated.[62]

Rule 15 can also be applied to canon 67. The *odium* here is the unwarranted extension or restriction of a privilege.[63]

Rule 15 is also applicable to canon 73.[64] Privileges do not cease with the death of the grantor unless a special clause orders such cessation.

Rule 15 is applicable also to canon 76. The *odium* here is the loss of the privilege through non-use or contrary use.[65] In the same canon, the *odium,* however, may be the privilege

[60] *Rescripta . . . nec debent ad casus alios praeter expressos extendi.*

[61] *Per Apostolicae Sedis aut diocesis vacationem nullum . . . rescriptum perimitur, nisi etc.*

[62] Can. 64: *. . . ea tantum privilegia impertita censentur quae directe, perpetuo et sine relatione speciali ad certum locum aut rem aut personam concessa fuerant primo privilegiario, ...*

[63] *. . . nec licet illud [privilegium] extendere aut restringere.*

[64] *Resoluto iure concedentis privilegia non extinguuntur, nisi etc.*

[65] *Per non usum . . . haud onerosa non cessant.*

itself in reference to diminished rights of others. In this instance, a privilege may be lost by legitimate prescription or tacit renunciation.[66]

Finally, Rule 15 can be applied to the interpretation of canon 85. This canon indicates that a dispensation is an *odium* and must be interpreted strictly.[67]

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[66] . . . *quae* [*privilegia*] *vero in aliorum gravamen cedunt, amittuntur, si accedat legitima praescriptio vel tacita renuniatio.*

[67] *Strictae subest interpretationi etc.* Cf. also canon 50 . . . *adversantur legi in commodum privatorum.*

THE DEFENDER OF THE BOND*

POPE Benedict XIV, in the 18th century, made the establishment of the office of defender of the bond obligatory in every diocesan tribunal.[1] The defender of the bond was a new official in matrimonial procedure, and was probably the greatest single piece of new legislation for procedure in this period. Pope Benedict XIV created this office to protect the marriage bond against unlearned, easy-going, and even malicious judges, and against collusion by the participants in the trial.[2]

I. The Role of the Defender of the Bond in Marriage Cases

It is the obligation of the defender of the bond to safeguard the validity of the marriage bond—but not at the expense of objective truth. For a number of years, a private letter of the Sacred Congregation of the Sacraments addressed to Archbishops, Bishops, and Ordinaries of places was quoted to strengthen the position of the defender of the bond as being interested not only chiefly, but even exclusively, in upholding the validity of the marriage bond. In part, this letter stated: [3]

" . . . the Eminent Fathers observed that not a few of the defenders of the bond . . . have more than once failed to perform their office properly. For, although they are appointed to protect the bond of marriage, they seem to think that they

* Paper read by the Very Reverend Monsignor A. M. Bottoms, J.C.D., Officialis, Diocese of Amarillo, at the first Conference of Chancery and Tribunal Officials of the Province of San Antonio, San Antonio, Texas, November 26–28, 1956.

[1] Const. *Dei Miseratione,* 3 nov., 1741—*Fontes,* n. 318.

[2] Bottoms, *The Discretionary Authority of the Ecclesiastical Judge in Matrimonial Trials of the First Instance,* p. 27.

[3] S.C.Sacr., Letter, 5 Jan., 1937.—Bouscaren, *Canon Law Digest,* Vol. 2, p. 541.

sometimes have the right to make representations in writing, not in favor of the . . . marriage, but *positively* in favor of the truth—an attitude so far removed from the provisions of the law that there is no room for dispute about it."

This opinion was substantially modified by Pope Pius XII himself in an allocution delivered in 1944 to the Rota.[4] So important are these observations by the Holy Father, that we shall quote in its entirety that section of the allocution dealing with the defender of the bond: [5]

" The function of the defender of the bond is to uphold the existence or the continuance of the matrimonial bond; not, however, absolutely, but in subordination to the purpose of the trial, which is the quest for and presentation of the objective truth.

" The defender of the bond must work toward the common end, in as much as he seeks out, exposes, and clarifies everything which can weigh in favor of the bond. In order that he, who is considered as " *pars necessaria ad iudicii validitatem et integritatem,*" may effectively perform his duty, the procedural order gives him particular rights and assigns him definite duties. And as it would be inconsistent with the importance of his office and the careful and conscientious fulfillment of his duty were he to content himself with a perfunctory review of the record and a few superficial remarks, so too it is not proper that his office be entrusted to persons who are still wanting in experience of life and maturity of judgment. The fact that the observations of the defender of the bond are subject to scrutiny by the judges does not exempt from this rule, for the judges should find in the careful work of the defender of the bond an aid and complement to their own activity, and it is not to be supposed that they must do all his work and conduct all his investigations over again in order to be able to rely on his representations.

[4] *AAS,* XXXVI (1944), 281–290.

[5] English translation taken, with a few minor changes, from Bouscaren, *Canon Law Digest,* Vol. III, pp. 614–616.

" On the other hand, it is not to be expected that the defender of the bond shall elaborate and make up at all cost an artificial defense, without concern as to whether or not his statements have a serious foundation. Such a requirement would be contrary to sound reason; it would burden him with a useless and meaningless task; it would not clarify but rather confuse the question; it would do harm by dragging out the trial to interminable lengths. In the interest of truth itself and for the dignity of his office, therefore, it should be acknowledged as a maxim for the defender of the bond that, in a proper case, he has the right to declare that after a careful, thorough, and conscientious examination of the record, he has found no reasonable objection to propose against the petition of the plaintiff or petitioner.

" This fact and this consciousness that he is not bound to contend unconditionally for a predetermined thesis, but is working in the interest of truth as it is, will save the defender of the bond from proposing questions which are one-sidedly suggestive or tricky; from exaggerating and changing possibilities into probabilities and finally into accomplished facts; from claiming or feigning contradictions where a sound judgment sees none or easily explains them; from impugning the veracity of testimony because of discrepancies or inaccuracies in matters which are not essential or are without importance to the object of the trial, discrepancies and inaccuracies which, according to the well-known psychology of testimony, are within the limits of normal causes of error and do not substantially impair the value of the testimony itself. Finally, the consciousness of being bound to serve the truth will deter the defender of the bond from demanding new proofs when those already adduced are fully sufficient to establish the truth—a practice which We have on another occasion designated as not to be approved.

" Let it not be objected that the defender of the bond is required to write his observations, not '*pro rei veritate*', but '*pro validitate matrimonii*'. If by this is meant that his part

is to bring out everything that is in favor of, and not which is contrary to, the existence or continuance of the bond, it is quite correct. But if it were meant to assert that the defender of the bond is not obliged as much as any one else to make his activity serve as its ultimate purpose the ascertainment of objective truth, but that he must sustain the imposed thesis of the existence or necessary continuance of the bond, unconditionally or without regard to the proofs and to the truth brought out in the trial, this assertion must be held false. In this sense all those who have part in the trial, without exception, must make their action converge to the one end: *pro rei veritate!*"

II. The Office of the Defender of the Bond

The intervention of the defender of the bond is required in all judicial processes, both formal [6] and summary,[7] and in the quasi-judicial processes in non-consummation [8] and Helena [9] cases; his intervention is not required in Pauline Privilege [10] and simple lack of form [11] cases.

A defender of the bond is to be appointed by the Bishop permanently or for individual cases.[12] From the clear terminology of Canon 1589, § 1,[13] it would appear that even the vicar general may appoint a defender of the bond, at least for a grave reason in cases of necessity, and this without a special mandate, unless the Bishop reserves it to himself.[14]

[6] Art. 15, S. C. de Sacram., *Instructio,* 15 aug. 1936—*AAS,* XXVIII (1936), 313–361.

[7] Can. 1990.

[8] Rule 15, S. C. de Sacram., *Regulae Servandae,* 7 maii 1923—*AAS,* XV (1923), 392–413.

[9] Doheny, *Canonical Procedure in Matrimonial Cases, Vol. II, Informal Procedure,* 503.

[10] Cf. can. 1123.

[11] Art. 231, § 1.

[12] Art. 15.

[13] "Ordinarii est . . . vinculi defensorem eligere . . ."

[14] Doheny, *op. cit.,* Vol. I, p. 70. Cf. can. 368, § 1.

As a general rule, the presence of the defender of the bond is always required. Along with the other participants, he is to be cited by the presiding judge,[15] although this citation does not require all the formalities; if he is duly notified in any manner of the need of his presence in court at a designated time for a particular case, the purpose of the citation appears to be sufficiently realized.[16] If the defender of the bond happens to be present even though not summoned, the acts of that session of the court are valid; if he has been duly summoned, but does not appear, the acts are likewise valid.[17] Where the deposition of parties or witnesses is secured by means of the rogatorial commission, the presence of the defender of the bond or a substitute is not necessary.[18] In all cases, however, in which the defender of the bond is not present during the examination, the acts of that session or the deposition secured by rogatorial commission must afterwards be submitted to his scrutiny.

In view of the importance of his position, the defender of the bond should be well qualified by his practical knowledge of canon law. The code, as in the case of judges and advocates, recommends that he be a doctor of canon law or at least well versed in it; but, unlike the others, significantly adds, " . . . *prudentiae et iustitiae zelo probati.*" [19]

The appointment of more than one defender of the bond, even permanently, does not violate the letter or spirit of canon law; the code is silent on the matter, but a parity might be found in the office of vicar general.[20]

[15] Art. 74, § 1.

[16] Doheny, *op. cit.*, p. 69, note 62.

[17] Cf. Can. 1587.

[18] Bottoms, *op. cit.*, p. 83, note 18.

[19] Can. 1589, § 1.

[20] Cf. can. 366; Doheny, *op. cit.*, p. 71.

III. Obligations of the Defender of the Bond

The obligations of the defender of the bond are as follows—what he *must* do. It is his duty:

1. To be present at the examination of the parties, the witnesses, and the experts; to present to the judge the sealed and signed interrogatory for the examination of the parties and witnesses; to suggest new questions arising during the course of the examination.[21]

2. To weigh the points proposed by the parties and to contradict them, if necessary; to examine the documents presented by the parties.[22]

3. To write animadversions against the nullity of the marriage and to state the proofs for the validity of the marriage.[23]

4. To see to it that the interrogatories proposed be accurately drawn up in their entirety, and are pertinent to the matter of the case, in view of the particular ground of nullity involved.[24]

5. To recast the questions proposed by the attorneys if they appear to be leading questions.[25]

6. To incorporate without change into the interrogatory the questions of the Promotor of Justice, when the latter impugns the marriage.[26]

7. To request information, if the case demands, from the defender of the bond in the diocese where the marriage was contracted, and from other possible sources.[27]

[21] Can. 1968, 1°; Art. 70, § 1, 1°. The defender of the bond never has the right to propose his questions directly to the parties, witnesses, or experts; this must always be done through the intermediary of the judge—Art. 101. It seems to this writer that the interrogatories could be given to the judge well beforehand, in order to give him time to study over the questions.

[22] Can. 1968, 2°; Art. 70, § 1, 2°.

[23] Can. 1968, 3°; Art. 70, § 1, 3°.

[24] Art. 70, § 2.

[25] Art. 70, § 2.

[26] Art. 71, § 2.

[27] Art. 72.

8. To sign the depositions of the parties, witnesses, and experts.[28]

9. To take note of points and articles submitted by parties or witnesses in preparing interrogatories for witnesses [29] or at least during the actual examination.[30]

10. To appeal within the prescribed time from the first sentence favoring nullity. [31]

IV. Rights of the Defender of the Bond

The defender of the bond has the right:

1. To inspect the acts of the process always and at any stage of the trial even though they have not been published; to demand new extensions of time for the drawing up of the written documents.[32]

2. To be so well informed as to the proofs and allegations as to be enabled to employ the right of contradicting them.[33]

3. To request that other witnesses be introduced, or that the same ones be subjected to another examination, even though the trial has been completed, and the process published, and to present new animadversions.[34]

4. To demand that other acts, which he has suggested, be drawn up unless the tribunal refuses by unanimous vote.[35]

5. To establish the identity of person being examined, if known personally to him.[36]

6. To introduce witnesses.[37]

[28] Art. 104.

[29] Art. 70, § 1, 2°.

[30] Art. 125.

[31] Art. 213, § 2.

[32] Can. 1969, 1°; art. 71, § 1, 1°.

[33] Can. 1969, 2°; art. 71, § 1, 2°.

[34] Can. 1969, 3°; art. 71, § 1, 3°; cf. 107, § 1.

[35] Can. 1969, 4°; art. 71, § 1, 4°.

[36] Art. 97.

[37] Art. 123.

7. To secure postponement of notifying the party concerned of the names of witnesses.[38]

8. To have witnesses summoned who were suggested and then renounced by party.[39]

9. To demand, whenever an excerpt of a document has been presented, that the complete document, either the original or an authentic copy, be submitted.[40]

10. To request an oral discussion of the case, after the last rejoinder.[41]

11. To introduce an incidental case.[42]

12. To introduce a complaint of nullity.[43]

V. Consultation With the Defender of the Bond

The defender of the bond is to be consulted on the following occasions:

1. By the ordinary, before appointing a guardian in insanity cases.[44]

2. Before the judge decides whether to admit or reject the excuse alleged by a defendant for not appearing.[45]

3. Before the judge declares the defendant contumacious for not answering the summons at all.[46]

4. Before the judge admits proofs which seem unduly to delay the progress of the trial.[47]

5. Before securing an interpreter to translate the acts to be sent to Rome,[48] or to be used in interrogating anyone.[49]

[38] Art. 126, § 2.

[39] Art. 132, § 1.

[40] Art. 166.

[41] Art. 186, § 1.

[42] Art. 187.

[43] Art. 211, § 1.

[44] Art. 78, § 3.

[45] Art. 89, § 1.

[46] Art. 89, § 2.

[47] Art. 95, § 2.

[48] Art. 105, § 2.

[49] Art. 108.

6. Before the court itself recalls *ex officio* any of the parties, witnesses, or experts for questioning.[50]

7. Before the auditor brings about a confrontation of witnesses among themselves, or with the parties.[51]

8. Before new witnesses may be admitted after the publication of the testimony.[52]

9. Before the auditor secures the opinion of experts, in all cases outside of those involving impotence or insanity; [53] before the presiding judge designates the number of experts [54] or substitutes other experts.[55]

10. Before the auditor determines in his decree the points about which the study of the experts should concern itself,[56] and before the auditor requests the parties to present questions for the experts.[57]

11. Before the presiding judge seeks better qualified experts (*peritior*).[58]

12. Before the court decides to admit an incidental case; [59] and if admitted, before deciding whether it is to be decided judicially or administratively.[60]

13. Before the court corrects or revokes an interlocutory sentence.[61]

[50] Art. 107, § 1; cf. Art. 115.

[51] Art. 133.

[52] Art. 135, § 1.

[53] Art. 140. In cases of impotency and lack of consent on account of insanity, the opinion of experts is always required.—Art. 139.

[54] Art. 141.

[55] Art. 144.

[56] Art. 147, § 1.

[57] Art. 147, § 2.

[58] Art. 153.

[59] Art. 189, § 1.

[60] Art. 190, § 1.

[61] Art. 195.

VI. Formulating the Interrogatories

One of the most important duties of the defender of the bond is to make up the questionnaires which are proposed to the parties and witnesses by the judge.[62] The questions to be proposed are general and particular. The preparation of general questions requires no great study or forethought. The same list can be used for nearly all the trials. However, this is not true of the particular questions, especially in formal trials. Prepared form questions would generally suffice in summary and administrative cases, where the evidence is chiefly documentary. The defender of the bond must be thoroughly conversant with all the details of the specific case under consideration before he can formulate pertinent questions. He should not use the same stereotyped set of questions for several persons.

In regard to formulating the interrogatories, it should be noted that the defect of leading questions can easily arise in matrimonial causes which often deal with hidden intentions and motives. In such cases, if the interrogations are carelessly composed, it is easy to suggest the response, or to imply the answer most likely to favor a declaration of nullity. For example, this type question should be avoided: "Titus, was not this condition a *sine qua non* in bringing about your consent to marry?" To which Titus, if he has any intelligence, will readily respond, "Indeed it was a true condition *sine qua non!*" In order to ascertain the truth, simple requests should be made of the party: he should be asked to describe his state of mind during the ceremony; to indicate the circumstances which preceded the marriage, etc. It would be most inept, for instance, in a trial based upon the allegation of an intention

[62] Can. 1968, 3°; Art. 70, § 1, 3°. Doheny, *op. cit.*, p. 312, remarks: "The questions proposed by the *Defensor Vinculi* can hardly be expected to elicit complete and exhaustive information about all the phases of a case, as the *Defensor Vinculi* is primarily interested in safeguarding the validity of marriage. Hence, the examining judge has the distinct obligation of preparing sets of questions, designed to supplement those of the *Defensor Vinculi,* particularly to seek out all arguments to establish validity or invalidity."

contra bonum prolis, to ask, "Did you actually intend to exclude all right to the conjugal act, or only the exercise of the right?" The party could readily perceive the implications, and is liable to assert that he had excluded all right, when in fact he had never thought even remotely of such a distinction.[63]

The defender of the bond has the further right of proposing questions during the actual examination of the parties, witnesses, and experts.[64] It is to be noted, however, that these questions are to be suggested to the judge, either orally or in writing, who in turn proposes them to the persons being questioned.[65]

VII. The Defender's Animadversions

After the brief of the parties has been received by the court, the defender of the bond should submit his animadversions within the period of time designated by the presiding judge.[66] In this written rejoinder, the defender of the bond is to uphold the validity, and is further obliged to deduce solid arguments against the nullity of the marriage in question.[67]

In a proper case, he has the right to declare that he has found no reasonable objection to propose against the petition (cf. Pope Pius XII's allocution, quoted above). However, even in such a case, the defender of the bond should not simply state his views, but should present the circumstances which influenced his conclusions. Ordinarily, however, the defender's recommendations will be in favor of the validity of the marriage in question.

[63] Cf. Bartoccetti, *De Causis Matrimonialibus* (contained in Lega-Bartoccetti, *Commentarius in Iudicia Ecclesiastica*) p. 141*.

[64] Art. 70, § 1, 1°.

[65] Art. 101.

[66] Art. 180, § 1. This period of time may be extended for a reasonable cause; the defender must consent to any curtailment of this time.—Art. 181; cf. can. 1862, § 2.

[67] Can. 1968, 3°; Art. 70, § 1, 3°.

Neither the Code nor the instruction *Provida* specify the form or content of the animadversions, beyond the rather general recommendations of canon 1968 and Article 70, already mentioned. For clarity and order, it would be well for the defender to follow the outline of the Rota sentences; in this way the animadversions will be most helpful to the court. The animadversions, following this method, should consist of a heading, three main divisions or sections, and a conclusion. The first principal section, the *species facti,* outlines a brief history of the case; the second section, the *in iure,* expounds clearly and succinctly the principles of law involved; the third section, *in facto,* demonstrates the relation between the law and the facts, which leads to the defender's conclusions.

EPISCOPAL VISITATION OF RELIGIOUS FOUNDATIONS*

OUR present Holy Father has called men and women religious the children of the Church's predilection, for whom the Church makes wise provision to govern their way of life.[1] Among these provisions the Council of Trent pointed out the importance of visitation by bishops and regular superiors as a most suitable way to prevent relaxation and maintain observance.[2] Hence the Code of Canon Law assigns to the local Ordinary a grave responsibility, of promoting regular observance by periodic visitation of most of the religious houses in his diocese. How heavy the responsibility is in this country can be seen in the current *Catholic Directory:* in round numbers there are 9000 religious brothers and 160,000 sisters who, as we shall see, require full episcopal visitation.

Schaefer defines visitation " a careful inquiry, conducted by the competent superior, into the government and religious discipline of individual houses ".[3] His definition includes inspection by religious superiors as regulated by canon 511 and —what is our concern—the corresponding activity of the local Ordinary in canons 512-513. In another place of the Code [4] he is charged with visitation of all the places in his diocese to uphold Catholic faith and morals, and correct spiritual abuses among his clergy and people. Here, as external superior, he has a parallel power of inspection of religious houses in order to find out how well superiors and members are living up to

* Address delivered by the Reverend James McVann, C.S.P., J.C.D., St. Paul's College, Washington, D. C., at the National Convention of The Canon Law Society of America, Atlantic City, N. J., October 24, 1956.

[1] Ap. constitution *"Provida Mater Ecclesia,"* Feb. 2, 1947, par. 1.

[2] Session 25, *De Regularibus et Monialibus,* chap. 1.

[3] *De Religiosis,* n. 557.

[4] Canons 343–346.

their Rule. While, in terms of canon 345, his visit is to be carried out in a fatherly spirit, yet when necessary he can invoke his jurisdictional authority to correct aberrations with precepts and punitive sanctions.

The Ordinary has five years to get around to all the religious houses of his diocese. Canon 512 allows him to choose substitute visitors, to whom he may delegate his authority in whole or in part. Some dioceses have a permanent official called the Visitator of Religious, the Vicar for Religious, the Episcopal Representative for Religious Communities, etc. One American archdiocese has five priests at the work, another has fifteen. That is understandable. An archdiocese, for example, with 8,000 sisters and 1,000 brothers subject to the full authority of the Ordinary needs to keep its office of religious visitation busy all the time.

In a paper of this length it is possible to cover only some of the law on episcopal visitation. Since the authors treat extensively the extent of the Ordinary's authority, that much will receive less attention, allowing the larger study to be given to the manner of conducting a visitation, which has received comparatively little attention in the commentaries and even in the special studies.

Extent of the Local Ordinary's Power of Visitation

So we first consider the extent of the authority of the local Ordinary to visit the houses and churches of religious, and their apostolic works of charity or education. Canon 512 distinguishes the various kinds of institutes, and specifies the Ordinary's visiting power over each kind.

He has unrestricted power to visit the house and church (or chapel) of his own diocesan religious, both men and women, both clerical and lay; the monastery of nuns subject to himself or immediately subject to the Holy See; and the monastery of nuns subject to regular superiors whenever those superiors have failed to make their own visitation for five years—otherwise he visits them only to examine their observance of clois-

ter.[5] In visiting diocesan religious he is to refrain from changing their Rule once it has been approved by diocesan authority,[6] all the more so if the congregation has spread into other dioceses. In the latter instance any change in the Rule must be the decision of all the bishops concerned, in consultation with the higher superiors of the congregation.

He has almost as unrestricted a power over the houses of lay congregations of papal approval—and they comprise the great number of sisters and brothers in this country. Canon 512, par. 2, n. 3, taken with canon 619, par. 2, n. 2, directs him to inquire into their internal religious life. From this Goyeneche concludes that a visitor of women of papal approval has as much authority to examine their house as the house of diocesan sisters.[7] Only some financial matters will be withdrawn from his inquiry.

Over the houses of clerical religious of papal approval the local Ordinary has much less authority. They have their own clerical superiors, to whom the common law entrusts much responsibility of house visitation. The Ordinary is limited to an inspection of their church, public chapel, sacristy, and confessionals, including the confessionals outside the church or chapel for the convenience of the faithful.[8]

All houses of regulars are exempt from his authority, as canon 615 states. Canon 1261 makes one exception: When the local Ordinary makes a regulation about divine worship in the churches of his diocese, he can visit the churches of exempt religious to see that his law is enforced. Elsewhere the Code assigns him a duty of vigilance over the houses of regulars[9] which, however, does not imply a visitational power.

[5] See the decision of the Code Commission, Nov. 24, 1920, *Digest,* I, p. 293, which says that he is to conduct his investigation at the grille.

[6] Larraona, in *Commentarium pro Religiosis,* vol. 5, an. 1924, p. 144, note 14, says that local Ordinaries should proceed with "the greatest prudence and forbearance" in the matter of giving their own regulations to houses of diocesan religious, lest such regulations will confuse the unity of spiritual and administrative direction so necessary in the government of religious houses.

[7] *Quaestiones Canonicae de Jure Religosorum,* I, 176–177.

[8] Schaefer, *op. cit.,* n. 589.

[9] Canon 617.

When the community of regulars has charge of a parish church, in terms of canons 344 and 631, par. 1, he makes a visitation of the regular pastor and assistants just like his own clergy, and inspects certain furnishings of the church. And if the church is the parish church of a " secular " parish, though staffed by regular clergy, he makes a visitation of it and its clergy as completely as he would a church in charge of the diocesan clergy.

Extent of Visitation of Financial Transactions

Canon 512, par. 3 brings within the view of episcopal visitation certain financial transactions of religious houses and individual religious, treated in canons 533-535. The following scheme rearranges the law of these canons according to a descending scale of episcopal authority to inspect finances.

1. *Monasteries of nuns, houses of women's congregations of diocesan or papal approval*

a) The investment or re-investment of dowries, for which the previous consent of the local Ordinary is required. Houses of women's congregations have also to make a report on the state of the dowry funds at visitation.

b) The investment of money of the house, for which previous consent of the Ordinary is required. Houses of women of papal approval do not come under this rule. When the house of diocesan women is also the provincial or general house, the consent of the Ordinary is needed to invest the province's or general community's money.

c) The investment or re-investment of trust funds left to the religious house for divine worship or charity, to be spent in that house or diocese: the previous permission of the Ordinary is needed, and he has the right to get subsequent reports on the investment. Examples of such trusts are founded masses to be said in that chapel, burses for students, and funds for the upkeep of a hospital bed.

d) Any alienation of property, for which the superior must first receive permission of the local Ordinary. Houses of papal approval do not come under this measure.

e) The annual financial report of temporal administration to the local Ordinary. Vermeersch-Creusen [10] say that houses of papal approval do not make this report.

2. *Houses of men's congregations* (laymen or clergy) *of diocesan or papal approval*

The investment or re-investment of trust funds, etc.[11] Vermeersch-Creusen [12] say that this requirement does not apply to houses of exempt clerical congregations.[13]

3. *Individual religious*

All individual religious, regulars included, need the previous permission of the local Ordinary before investing money given to a parish, or entrusted to the religious himself for the parish, and thereafter he must be ready to give an account of such funds when asked.

In summary, whatever financial transaction has to be first submitted to the local Ordinary, and whatever financial reports should be made to him at stated intervals or upon demand, are matters for the Ordinary or his delegate visitor to scrutinize at visitation time. Reilly [14] says it is not necessary to submit the annual financial report of a house of diocesan women religious during visitation when another arrangement has been made for the diocesan officials to go over it.

Visitation of the External Apostolic Activities of Religious Houses

Canon 1382 charges the local Ordinary to visit schools, chapels, playgrounds, social centers, etc., in all matters having to

[10] *Epitome Juris Canonici,* I, n. 660.

[11] As in *l.c.,* above.

[12] *Op. cit.,* n. 656.

[13] T. F. Reilly, author of the Catholic University dissertation *The Visitation of Religious,* notes of the canons related to the jurisdiction on the local Ordinary over the trust funds of congregations of papal approval (cc. 533, par. 1, nn. 3, 4, 535, par. 3, n. 2, 618, par. 2, n. 1), "These brief statements of law abound in difficulties and have given rise to many conflicting opinions, etc." (p. 100).

[14] *Op. cit.,* p. 89–90.

do with religious and moral training. The internal schools conducted by exempt religious for their own professed are withdrawn from this inspection.

Though the canon is silent on the point, another type of school is also withdrawn. It is the high schools and colleges conducted by the religious orders. Leo XIII in his constitution *Romanos Pontifices* of May 8, 1881 exempted them from the episcopal authority in England, and the exemption passed to other mission countries. By the time that the Code was promulgated, the privilege was generally in peaceful possession elsewhere by custom or prescription, and the Code did not revoke it in express words.[15]

Of schools conducted by other religious Creusen-Garesche-Ellis[16] say, "Usually the Ordinary leaves a great latitude to important congregations that have merited this mark of confidence."

For other works of zeal conducted by religious we have canon 1491, which commands the bishop to make visitation of all hospitals, orphanages and similar works of religion and charity. If they have not been erected into a juridical person and have been entrusted to diocesan religious, he has full jurisdiction over them. If they have been assigned to religious of papal approval, he inspects the teaching of religion and morals, the exercises of piety, and the management of sacred things. Canon 1492 further empowers him to require an accounting of the administration of funds derived from legacies left to carry on the pious works of such institutions, even of those that are otherwise exempt.

Visitation of Societies of the Common Life and Secular Institutes

To complete our survey of this first part, canon 675 applies the law of episcopal visitation contained in canons 512-513 to societies of the common life. The authority of the local Ordi-

[15] See the authors cited in Bouscaren-Ellis, *Canon Law, A Text and Commentary,* 2nd rev. ed., p. 777.

[16] *Religious Men and Women in the Code,* p. 67.

nary to visit their houses depends on their status as diocesan or papal, lay or clerical, of men or women, corresponding to the classification of religious in canon 512. For example, the local Ordinary has complete powers of visitation over houses of societies of laymen or women of diocesan status, and almost complete powers over similar houses of papal status. As for secular institutes, Article 3 of the "Special Law, etc." attached to the apostolic constitution "*Provida Mater Ecclesia*" (as above) requires them to have at least houses of formation and administration, and Article 8 states that the institutes are subject to the local Ordinaries in the same way as non-exempt congregations and societies.[17] Therefore, unless they enjoy a special privilege, their houses belong under episcopal visitation.

Manner of Conducting the Visitation

Canon 513, par. 1 indicates the field of inquiry. "The visitor has the right and duty to interrogate the religious who he judges should be questioned, and to investigate matters pertinent to the visitation." These general words of the canon leave the commentator with the task of finding in other sources the way that the questioning and the other investigating should go on. We find the main headings in Leo XIII's constitution *Conditae a Christo:* [18] the practice of the virtues, religious discipline, and the financial accounting. Berutti [19] says they are "the personal, material and financial condition." The following procedure is largely drawn, with some adaptation, from two articles by É. Jombart in *Revue des Communautés Religieuses* of 1930 [20] and from a manuscript manual used in one of the large archdioceses. As we have seen, the procedure is followed fully in houses of men and women of diocesan approval and in those monasteries of nuns which canon 512 commits unreservedly to the local Ordinary; and it

[17] See *Digest,* III, 143, 146.

[18] *Fontes C.I.C.,* n. 644, par. 1, n. 10.

[19] *Institutiones Juris Canonici,* III, n. 33.

[20] "Questionnaire pour visite canonique," vol. 6, pp. 15–21, 70–74.

is followed in almost all its details in houses of brothers and sisters of papal approval, except for some questions on the finances that will be noted. Since the greater number of houses to be visited will be convents of sisters, the questions and other references are framed to apply to them. The chief parts are:

1. the ceremonial reception, opening address, inspection of the sacred place;
2. the interview of members of the community;
3. the inspection of the building, equipment, finances and archives;
4. the interview of the superior and other officials;
5. the concluding address and instructions, and Benediction of the Blessed Sacrament.

1. *The Ceremonial Reception, etc.*

In its chapter *Ordo ad visitandas parochias,* the *Pontificale Romanum* requires an elaborate ceremony at the episcopal visitation of a church, some of which is used in a simple manner for the visitation of a religious house.[21] The vistor is ceremonially received by the superior and community, who precede him to the chapel reciting the *Veni, Creator Spiritus.* There the visitor recites prayers that ask God to visit His favor on the community, and then gives a short address on the purposes of his coming. He assures the sisters that his mission is kindly as well as authoritative, for he intends to see not only that they live their religious life well, but that they are also getting the helps they need to live it well. He reminds them to answer all questions truthfully and without reservation. Not to be mentioned are the petty quarrels or faults of a religious that can be corrected in the ordinary routine, or matters known only in confidence unless it is feared they will do serious harm to the community.

The visitor then examines the sacred place, either a church or a chapel. He inspects the tabernacle, altar stone, altar

[21] Fortescue-O'Connell, *The Ceremonies of the Roman Rite Described.* Westminster, Md., Newman, 1949, page 371.

cloths, communion rail, Stations of the Cross (and their certification), walls and floor, wiring and lighting, and confessionals. In the sacristy he sees the sacred vessels, relics, the place for securing the tabernacle key, the missal (to be sure that it is in good condition and has the recent Masses), the list of approved days for Benediction, and the card with the names of the chapel and the Ordinary. Sometime during the visitation he recites the prayers for the dead as given in the *Pontificale*.

2. *Interviews of the Members*

At the grille, if the place is a monastery of enclosed nuns, or in some room outside of the enclosure if it is a convent of sisters, the visitor then conducts the individual interviews.[22] He begins with the youngest professed (at the house of preparation he begins with the junior postulant or novice). For the purpose he has been given a list of the sisters. Though canon 343, par. 2 permits him to bring other clergy as assistants of the visitation, he conducts this part of the inquiry alone in order to win the trust of the sisters and to respect their confidences. Bastien [23] urges that all the professed be interviewed, lest the visitor be tempted to take the easy way of a select list at a difficult visitation.

His right to ask questions is limited by the terms of canon 513, ". . . to know of the matters that pertain to the visitation." He investigates the outward life of the community, leaving strictly alone all matters that belong under the sacramental seal, all crimes which the law reserves to the cognizance of the Holy Office,[24] and any individual failings that should be kept in confidence. Goyeneche notes that the visitor should

[22] To save time, the Visitor for Religious Communities of one diocese sends beforehand an extensive questionnaire for each sister to fill out in writing and keep for the visitor's interview, without any intervening inspection by the superior.

[23] *Direttorio Canonico*, n. 312.

[24] Cf. Canons 247, par. 2, 501, par. 2, and the decree of the Holy Office, May 5, 1901.

not hear confessions, for the same reasons that bar superiors from hearing the confessions of their subjects.[25]

As for the questioned sister, she has the corresponding obligation to answer truthfully and entirely all that the visitor has a right to ask.

Where there are postulants or novices, they are questioned about their supernatural motives in coming to the religious life, their proper freedom in coming, and their knowledge that they are canonically free to leave. Novices are also asked most of the same questions as the professed, on their religious observance and their ability to get along in community life. At the end the visitor asks, "Have you any special difficulty?"

Jombart proposes as the first question to the professed, "Are you happy?" This is significantly chosen to be the lead question. As one experienced Vicar for Religious has explained, every sister is four things: a woman, a member of the community, a bride of Christ, and a professional (that is, a teacher, a nurse, or an administrator). She has to keep all four parts of herself each in agreement with the others. If she succeeds, she is content.

The questions go on. What is her state of health? Does she get proper physical care and rest? Is the food tastefully prepared? Are the sleeping quarters good?

In her exterior conduct is she faithful to the Constitutions and the Rule? Does she come promptly to the common exercises? Does she perform the other exercises at the proper time? Does she observe the silence? Obtain all required permissions? Take care of articles entrusted to her, and keep accurate account of the money she handles? Does she obey promptly and completely?

Does she respect the rule about written correspondence with outsiders only through the superiors? Does she keep the proper reserve in her association with outsiders, especially with men? Does she read dangerous books, or take part in over-free conversation? Does she observe the rules of modesty?

[25] *Op cit.*, I, 176–177.

Has she neglected the orders of superiors or criticized their decisions? Does she speak with confidence to them? Is she satisfied with the superior? Is the superior kindly and motherly, and an upholder of the Rule?

The sister is asked about her former and present assignments. Does she carefully carry out the work assigned? Is her work in conflict with her spiritual exercises?

How does she get along with the rest of the community? Is she kindly, patient, and useful to all? Does she have difficulties with this department of the common life? Does she use her opportunities to benefit the children or the sick people confided to her care?

How is the Rule observed by the community? Is there any sister who gives bad example or disedification by her remissness and bad temper?

At the end of the interview the sister is asked whether she has any complaints that should be made to the visitor.

To protect the sisters in their duty to answer questions truthfully, canon 513 has this further measure: "Nor has the superior the right in any way whatever to turn them aside from this obligation or otherwise to hinder the purpose of the visitation." This is no idle caution; Bastien assures us, "The case is not a rare one".[26] Canon 2413 meets the abuse of authority with severe penalties:

> Once the visitation has been announced, a superior who sends subjects away from the house without the visitor's consent; or a superior or subject who, herself or through others, directly or indirectly, persuades the religious to meet interrogations with silence, insincerity, or dissimulation, or who under any pretext molests them because of their replies: shall be declared incapable of holding any office involving the government of others, and offending superiors shall be deprived of their office.

[26] *Op. cit.*, n. 312.

If the visitor is acting as delegate of the Ordinary, he will look to his mandate to see whether he himself can inflict these penalties or reports the offenses to the Ordinary for the latter to pass the punitive decree.

3. *Inspection of the Building, equipment, finances, and archives*

a. Examination of the building and equipment

The next stage of the visitation, the inspection of the convent, looks principally to its function as a religious house, its good condition, and its facilities for safety. When the visitor enters the cloistered part of the house, he is accompanied by a priest or male religious of mature age and character. He sees whether each sister has a bedroom of her own, or at least her own partition of the dormitory. If the convent has a resident chaplain, the visitor checks whether his quarters are separate from the rest of the house, with its own entrance, and without direct access from the living quarters of the community. In the kitchen he asks about the cooking and the attractive preparation of the food. Everywhere he observes the material structure, its proper repair, the wiring, heating, and fire-escapes. He goes over the grounds and walks, and (unless the place is an enclosed monastery) inquires about the recreational facilities of the sisters and their opportunity to get away to a country place of the congregation. The visitor also ascertains the working conditions of the domestic help, their just wages, employment insurance, and catechetical instruction.

b. Financial Inspection

Then or later the superior and house treasurer are questioned about the economical condition of the convent. For a small house only some of the questions given below will be appropriate. A distinction must be made, in asking the ques-

tions, between diocesan congregations (or monasteries fully subject to the Ordinary's visitation) and congregations of papal approval.

In all houses the visitor asks: In whose name is the property held? Does this house belong to the religious institute, the parish, or the diocese? Is there any taxation on the property or on the real-estate holdings of the house (or, if it is the provincial or general house that is being visited, on the real-estate holdings of the province or institute)? How is the dowry fund invested? Are dowries rightly returned to departing sisters? How is the personal property of the sisters being administered? How are pious legacies left to the house administered?

At houses of diocesan congregations and at monasteries of nuns subject to the Ordinary, the visitor asks: Show the documents of incorporation in the civil law. Are all bank accounts, securities and other assets registered in the name of the civil corporation? What are the house's total assets? (If the provincial house or mother house is being visited, the question includes the total assets of the province or institute.) Explain the increase or decrease of assets since the last visitation? What is the total indebtedness of the house (or of the province, or of the institute)? What real estate or other valuable property has been alienated? By what authority? What damage has been done to the property, and what was its cause? What insurance is carried? What are the annual income and its sources? What are the annual expenditures? If there is a surplus, what is its disposal? If a deficit, how is it made up? In supplying the needs of the convent, is expenditure combined with a wise economy?

c. Archives

At the time of the first visitation after a house is established, the visitor inspects the document of foundation. After that, at the motherhouse or provincial house he inspects additional

records, including privileges and the financial settlements of the individual sisters.

d. External Apostolic Works

Some of the information about the school, hospital, or other apostolic work conducted by the local community will have already been collected from questioning the individual sisters, the officials, and the records. Further questions will depend partly on the nature of the good work itself. The following are questions that will be generally suitable:

Has the local Ordinary approved? Does the work conform to the purposes of the institute? Is it according to, or outside, the Constitutions? Is the work incorporated separately? Who supports it? Is it done by the community without remuneration? What are the annual income, the assets, the expenditures and the indebtedness? (This question is not asked of pontifical congregations.) What are the insurance and other liability on the property? What provision is made for the spiritual welfare of the children or other inmates, and the spiritual and material welfare of the employees?

The examination of the building looks to the same details as the examination of the convent: soundness of structure, needed repairs, heating and lighting, etc. It should be noted that this inquiry, while it can be done in connection with the visitation of the religious house, can also be done at another time or by another agency of the diocese, at the choice of the Ordinary.

4. *Examination of the Superior and Other Officials*

It is recommended that their examination take place after the inquiry in regard to temporalities, and that the superior be questioned last. Jombart (as above) presents a lengthy questionnaire for the superior which can be placed under the following headings:

a. Superior's tenure and administration

What is her term of office? Is she performing her duties

faithfully? Does she meet with her counsellors at the required times and give them full liberty of discussion?

b. Review of Constitutions and Rule [27]

Are the Constitutions read publicly at the fixed times? Are decrees of the Holy See likewise read publicly when that has been so ordered? Are the sisters acquainted with canonical direction that affects them, and are there suitable books on hand for them? Have the superiors trained them in respect for the laws of the Church, and a filial devotion to the Vicar of Christ? Have the instructions given at the last visitation been obeyed?

c. Relation of superior to subjects

Does the superior make herself accessible to the sisters? Does she show herself like the mother of a family? Is there an assured freedom from coercion at the time of the visitation?

d. Spiritual care

Does the chaplain say Mass every day, or on the required days? Do the ordinary confessor and other confessors come at the appointed times? Have the sisters the proper freedom to go to others than the regular confessors? Is there any abuse of this by superiors or subjects? Are the sacred canons, which safeguard the sisters against any unlawful exaction of a revelation of conscience, observed? Is the law about frequent confession and Communion respected?

e. Physical care

What opportunity is there for leisure and recreation? Is the food nourishing and attractively prepared? Do the sisters get proper medical care? Do they take reasonable care of their health? How many sick, sickly, or frail sisters are there? Are any so overburdened with duties that their health is en-

[27] In visiting congregations of papal approval, the visitor here has no power of decision. He consults the Rule only to acquaint himself with it. At a house of diocesan approval a delegate visitor confines himself to checking the authority that approved the Rule, and any changes in it since the last visitation, without undertaking to judge the Rule itself.

dangered? Are the sisters who need it allowed extra time to sleep?

f. Regular observance

Does the superior promote religious regularity by her own good example, kindness and motherly watchfulness rather than by excessive and harsh pettiness? Do the sisters come promptly to the common exercises? Do they absent themselves without permission and good reason? Is religious decorum kept? Is there any notable failure, in one of more sisters, in keeping the vows or Rule? What action has been taken to remedy this, and has it been successful? Have any professed sisters left or been dismissed since the last visitation, and what caused their departure?

g. Poverty and the common life

Is the vow of poverty generally well observed? Are required permissions sought? When general permissions are granted, are they kept within reason or do they lead to abuses? Do the sisters show a true spirit of poverty? To forward the common life, does the superior supply to all the sisters all that is needed in food and clothing? Are any of the sisters known to be getting commodities from the outside? When a sister is given charge of money, does she render a careful account of its disbursement? Do the sisters or community officials withhold anything for themselves or the house in the disbursement of legacies or donations left to the house or to individuals for the external works of charity or education? Do the sisters take good care of the common property and the articles assigned for their use?

h. Chastity and enclosure

Is the required prudence used in avoiding dangers to the vow of chastity? Are the laws of enclosure fully enforced in the part of the house reserved for the sisters? Do the sisters keep the Constitutions in the matter of visiting in the parlors? Except for necessity, does the superior see to it that the sister

leaving the house has a companion? Do the sisters avoid being alone with persons of the opposite sex? Are the regulations kept about a companion sister at medical examinations? Do the sisters observe a proper reserve in the presence of outsiders?

i. Obedience

Are the superior's commands and wishes in conformity with the law of the Church and the Constitutions? Does the community obey exactly, promptly and without complaint? Have the sisters been trained to obey in the spirit of faith, seeing the will of God in the commands of superiors?

j. Charity

Does a large charity obtain in the community? What of particular friendships and cliques? If antipathy, jealousy and harsh words exist, what is the cause, and how are they being remedied? Are the sisters supernaturally devoted to the children and their other charges?

k. Studies

Is there opportunity for study and private devotion? Do the sisters use the time designated in the Rule for study? Who directs their studies? Are they following outside courses? With what success? Who is responsible for the books they are given to read? Are the Constitutions about outside correspondence enforced? Do the sisters take a liberty beyond that which is assured them in the law of the Church, to write or receive letters apart from the control of the superiors?

l. Outside Activities

What new work has been taken on since the last visitation? Who authorized it? In the work of education, do the sisters get good spiritual results? (Questions of their scholastic methods and success will be left to investigation by the diocesan office of education.) What activity do they pursue in catechizing children who go to non-Catholic schools? What

other activity do they promote for children or young people?

m. Admission of candidates

These questions are asked at the motherhouse or novitiate. Are the postulants and novices properly admitted? Have the diocesan authorities been present for the "*exploratio voluntatis*" (canonical examination) before the novitiate and before first and final vows? Are vows renewed and final vows taken at the proper time? What special training is designed for the temporary professed? Is there any interference with the canonical freedom to depart?

After these questions the visitor may choose now to speak to the superior about his recommendations or directives (if the Ordinary has authorized him to give directives) which he prefers not to announce in the closing address to the community.

5. *The Concluding Address, etc.*

The community gathers a second time for the visitor's closing address, which is handily given in the chapel because Benediction will follow. The visitor exhorts the sisters to continue faithfully in their religious life and in their works of zeal. If he is empowered to do so, he may choose this time to issue warnings and decrees, and even visit canonical penalties upon refractory religious. Canon 513 says that recourse may be taken to higher authority against the decrees and penalties of the visitor, but only *in devolutivo*, that is, without suspensive effect. If the Ordinary or visitor holds a formal ecclesiastical trial and passes sentence, an appeal suspends the effect of the sentence.

At the end the visitor gives Benediction of the Blessed Sacrament, with the monstrance if the day allows it, or with the ciborium. Afterwards he makes a report of his findings and recommendations to the Ordinary, who may direct him to send a memorandum of his visit to the higher superiors of the congregation.

Cases and Studies

SECULAR PLACES OF RELIGIOUS

Canonical legislation orders the relations between local ordinaries and religious and most efficaciously prevents contact from becoming a conflict. The unity of purpose and the unity of supreme authority in the Church are the guarantee of orderly unfolding of all public activities. The efforts of every person are meant to contribute to a more abundant spiritual life in a peaceful and well ordered society, the city of God in the world.

As Pope Leo XIII said,[1] in order to promote and perfect religious life, the Roman Pontiffs have decreed to exempt religious from the local Ordinaries in certain matters; and yet, in order to protect diocesan discipline under the authority of the Bishop, exemption of religious is limited and restricted in many things.

Secular places of religious can be counted among the possible points of contact and conflict between the local ordinaries and religious. Their rights on this matter are not clearly defined, as anyone who tries to give an answer to the following case will find out.

An institute of men religious has no house canonically erected within the territory of a certain diocese. There is much natural beauty of mountains and valleys, woods and lakes there; the weather is ideal in the summer, and fishing, the most apostolic sport, is at its best in this part of the country. The institute plans to house the students of theology during the summer vacation in a place they have purchased as a summer resort, within the territory of this diocese. No permission from the local ordinary has been requested to open this place. Now the following questions arise:

1. What is the juridical status of the establishment?
2. May the priests visiting or staying there say Mass in a room they have arranged as a chapel? and furthermore,
3. May the Blessed Sacrament be reserved in that chapel, without the permission from the local ordinary?

[1] Const. *Romanos Pontifices,* May 8, 1881.

The Juridical Status

In order to introduce clarity and order in the study of secular places of religious, it will help to keep before one's eyes the various types of establishments which may form part of an institute or belong to it. These are:

1. Collegiate moral persons, to which paragraph 1 of canon 497 applies;
2. Branches of collegiate moral persons, to which paragraph 3 of canon 497 applies;
3. Secular places with no collegiate moral personality or juridical relation to a collegiate moral person, to which canon 497 does not apply.

The religious residences listed under number 1 are called by Maroto [2] principal houses and have their own collegiate personality. These can be formal or non-formal houses.[3] Those under number 2 are strictly so-called filial houses and have no legal status independent from that of the principal house. These, as well as those mentioned in number 1, belong in the generic class of religious houses. The places listed under number 3 are not mentioned in the Code of Canon Law. Places used for secular purposes are, therefore, commonly excluded from the classification of religious houses. They are mere secular dwellings.[4]

By using in the above classification the term "collegiate moral person", one is able to emphasize the nature of a religious house. Canonists state that the edifice in which the religious dwell is not the religious house in the juridical sense of canon 488, n. 5; the religious house is rather the moral person, a subdivision of the institute, which exists independently of the material edifice.[5] While this concept is retained, no one should overlook the intimate dependence and connection between the moral person and the house or place of its foundation; for in many instances, the change of place means a change of the moral person itself.[6]

[2] *CpR.*, V, 127.

[3] Cf. canon 488, n. 5.

[4] Flanagan, *The Canonical Erection of Religious Houses*, The Catholic University of America Canon Law Studies, n. 179, Washington, D. C., 1943, p. 25.

[5] Abbo-Hannan, *The Sacred Canons*, St. Louis, Mo., 1952, vol. I, p. 490.

[6] Larraona, *CpR.*, III, p. 47, note 174.

This study will consider only men religious, and seeks to answer the questions submitted above precisely in regard to the consent of the local ordinary, whether it be needed or not. This is a problem which regards the external hierarchy, without reference to the internal hierarchy of religious superiors. The term " religious house " will be used in its wide sense.

At one time certain religious, as the Discalced Carmelites, Dominicans, Jesuits, could establish houses without permission of the Holy See, and sometimes without that of the local ordinaries. Such privileges were later revoked.[7] No religious house can be validly erected today without the permission of the local ordinary.[8] This much is clear. But what is meant by " religious " houses, for whose erection the prescriptions of canon 497 must be observed, is not so clear. The meaning of the term " religious " is identical in every paragraph of the canon. The third paragraph implies the term " religious ", but does not in any way extend its meaning in paragraph 1; neither does it explain what " religious " means there. Yet, the term " religious " must be recognized as a key word in the interpretation of this canon, especially of paragraph three. What is said of schools, hospices and similar institutions in paragraph three, applies only to " religious " schools, hospices and similar institutions.[9] Canon 497, therefore, implies the possible existence of other establishments which, though they be property of religious, yet are not religious in the sense of this canon.

What, then, is a " religious " house? Canon 488, in which many terms affecting the religious state are defined, does not answer the question. Neither does any other canon in the Code. The question remains without an authentic answer. One has to have recourse to doctrinal statements whose value will depend on the authority of the writers, and finally on the intrinsic reasons for their opinions.

The authors are unanimous in their agreement on the minimum formal juridical description of a strictly so-called religious or principal house. These are the requirements: a) A building habitually used as a residence of religious; and b) A legitimate erection of the

[7] O'Brien, J. D., *The Exemption of Religious in Church Law,* Milwaukee, 1942, p. 100.

[8] Cf. canon 497.

[9] Larraona, *CpR.,* V, 431.

moral person.[10] To these conditions Larraona adds a third one, a Superior, even if he be only a vicar, provided his authority be ordinary and not only delegated.[11]

The main element of a principal religious house is the collegiate moral person established by the competent authority.[12] One must be careful when speaking of religious houses as non-collegiate moral persons. O'Brien affirms that " by virtue of the law itself, a religious house is endowed with at least non-collegiate moral personality, and if occupied by three or more religious, with collegiate personality." [13] However, a principal religious house is always a collegiate moral person.[14] Therefore, according to canon 100, § 2, it must consist of at least three physical persons. The fact that on occasion less than three religious live in a house does not change its legal status.[15] Regarding the nature of the specific moral personality of religious communities, provinces and houses, Michiels says that authors are not in agreement. Some call them collegiate moral persons in the proper sense, others prefer to call them collegiate moral persons in the broad sense, and finally some others consider them as juridical persons *sui generis*.[16]

The filial houses occupy the next and last place within the generic concept of a religious house. Writers easily err by demanding either too much or too little when describing filial houses. The interpretations given of canon 497, § 3, are particularly liable to incur this error. One must keep in mind that only " religious " schools, hospices and similar institutions are covered by the prescriptions of this law. Whenever they fall short of the concept of a " religious " establishment, they are simply secular establishments, to which the

[10] Simeone, *De Condicione Juridica Parvarum Domorum Religiosorum*, Padova, 1942, p. 182.

[11] *CpR.*, III, 48.

[12] Chelodi, *Ius Canonicum de Personis*, ed. 3, Vicenza, 1942, p. 390.

[13] *Op. cit.*, p. 103.

[14] Michiels, *Principia Generalia de Personis in Ecclesia*, Romae, 1955, p. 430.

[15] Tabera, *Derecho de los Religiosos*, ed. 2, Madrid, 1952, p. 15; Flanagan, *op. cit.*, p. 27.

[16] *Op. cit.*, p. 431.

prescriptions of canon 497, § 3, do not apply; much less the prescriptions of § 1 of this canon.[17]

A clear case of a secular place to which canon 497 does not apply are the Quasi-Residences mentioned in the Constitutions of the Claretian Missionaries: "In Quasi-Residences there shall be a delegate appointed by the Superiors. He and his companions shall devote themselves to the giving of missions and retreats." (I, 41.) According to the Claretian Code of Additional Law (n. 253) the main characteristic of a Quasi-Residence is the lack of stability. By its very nature a moral person is perpetual.[18] Therefore, a Quasi-Residence is not a collegiate moral person nor a branch of a collegiate moral person, and cannot be a religious house.[19] According to Michiels [20] the perpetuity required by canon 102, § 1, consists in this, that the moral person is not erected just for a definite period of time; it must be erected without a time limit or for an indefinite time. Even when it is foreseen that circumstances will change in the future, possibly in a definite future, at which time the moral person will be suppressed or changed, the required stability of the moral person is not lacking.

Another case of a non-religious house could arise in time of persecution. For instance, two religious priests are able to escape Hungary into Austria, and there they establish themselves *temporarily* in a building given them by a benefactor. This establishment is not a "religious" house. To acquire and possess temporary dwellings used in time of persecution, no permission is needed either from the Holy See or from the local ordinary. O'Brien [21] believes that in these cases the permission from the local ordinary is needed. However, there seems to be no good reason to say that these priests need the permission of the local ordinary to stay in the diocese. Of course, it is obvious that to work in the diocese during their sojourn some authorization must be obtained from the local ordinary.

[17] Larraona, *CpR.*, V, 431.

[18] Canon 102, § 1.

[19] Larraona, *CpR.*, IX, p. 105, note 556.

[20] *Op. cit.*, p. 423.

[21] *Op. cit.*, p. 109; Flanagan, *op. cit.*, p. 121.

Canonists are far from clear when writing about filial houses. Goyeneche [22] admits that in the Code of Canon Law the nature of filial houses is not determined nor are their characteristics defined. Maroto, a master of canonical jurisprudence, affirms that the strictly so-called filial houses are religious houses and that the prescriptions of canon 497, § 3, apply to them.[23]

Filial houses, according to Maroto [24] have these essential notes:

1. They are not moral persons on their own, rather they form part of another house;
2. They have no right to own property of their own;
3. The head of the establishment is a delegate at will of the Superior of the principal house.

These notes have a rather negative content. That means that, in practice, it will not always be easy to determine whether an establishment is only a filial house, or perhaps a secular place. There is a striking resemblance in all three points between filial houses and secular places which belong to a religious institute. On the other hand, the lack of the right to own property in its own name can apply also by particular law to principal religious houses. Such is the case at present in the Claretian Congregation, in which the right of individual houses to capitalize is restricted.

In this uncertainty of terminology, Maroto clearly states the principle that the local ordinary's permission is required for the erection of all religious houses, whether they be principal or filial. And then he adds that farms, resorts, etc., are not religious houses but property of religious houses; for these " no permission seems to be needed." [25] One would expect Maroto to commit himself unhesitatingly to the fact that no permission of the local ordinary is needed in the last case; but he only says that " it seems " that no permission is needed. Perhaps, Maroto was thinking about the possibility of such places being filial houses; although in most cases, he says, they are not religious houses at all, but only secular places.[26]

[22] *CpR.*, V, 443.

[23] *CpR.*, V, 122.

[24] *CpR.*, V, 127.

[25] *CpR.*, V, 128, note 18.

[26] *CpR.*, V, 126.

A careful reader will observe that Maroto, when speaking about secular places for which no permission from the local ordinary is required, only mentions farms and resorts; he does not include hospices, although in certain passages he adds an *etc.*[27] But practically all other canonists mention together, as equal in common law, farms, hospices, resorts, etc.[28] Beste[29] and Wernz-Vidal[30] cautiously speak only of farms and resorts, without including any type of hospices.

All these writers are especially concerned with the difference between the prescriptions of paragraphs one and three of canon 497. They are trying to make it clear that in the case of filial houses, exempt religious need not apply for permission to the Holy See. Only the norms of paragraph three apply then: the written permission of the local ordinary suffices. In the case of non-exempt religious the law is the same for both cases, whether it be the erection of a principal or a filial house. Eager to make clear their point, these writers are not concerned with the distinction which exists between filial houses and secular places. And rightly so. For even hospices (which are mentioned in canon 497), farmhouses and summer resorts can actually be erected as filial houses. In any case, the commentaries to canon 497 should mislead no one into believing that under no circumstances can hospices, summer resorts, farmhouses, etc., be established as something less than a filial house, and, therefore, free from the requirements of canon 497, § 3.

The term "religious house" must always be applied to filial houses, provided they are collegiate moral persons, according to the prescriptions of law.[31] Generally filial houses are established as a part or branch of a more important house and are called dependent residences.[32] There is only one Superior for both houses and he governs the dependent residence through a delegate removable at

[27] Cf. *CpR.*, V, 126.

[28] Cf. Goyeneche, *Principia de Religiosis,* Romae, 1938, p. 26, note 29; Larraona, *CpR.*, III, p. 48, note 177; Vermeersch, *De Religiosis,* nn. 100 and 101; Schaefer, *De Religiosis,* ed. 3, Romae, 1940, p. 77; Coronata, *Institutiones Iuris Canonici,* Romae, 1939, I, 633.

[29] *Introductio in Codicem,* 2 ed. Collegeville, 1944, p. 324.

[30] *De Religiosis,* Romae, 1933, p. 70.

[31] Larraona, *CpR.*, IX, 104.

[32] Vermeersch, *Periodica,* X, 20; Maroto, *CpR.*, V, 126.

will. These houses are " religious " houses, and the prescriptions of canon 497, § 3, apply to them.[33]

Larraona [34] warns against a possible misinterpretation of the nature of filial houses. Some call dependent residences those established outside the territory of the diocese where the principal house is located, and also houses governed not by a delegate, but by a real Superior with authority *ex officio,* even though he be only a vicar of the Superior of the principal house. In these two cases § 1 of canon 497 applies; the prescriptions of § 3 are not enough. The difference is material, mostly for exempt religious, of course. It is the mind of the Church to define the proper intervention of the external superiors in the erection of religious houses. The common law has its language and its recognized structure of the various units of religious institutes. The particular law may and often does expand the language and the structural elements of religious institutes. But all this happens without prejudice to the common law. An institute may possibly classify its smaller units as houses, independent residences, dependent residences, quasi-residences, and so forth. But all these units within the province have to respond to the language and meaning of the canons as to their relations to the external hierarchy of authority. A religious house which is erected as a collegiate moral person cannot be called a filial house and be erected by complying only with the prescriptions of paragraph 3 of canon 497. It is a religious house in the sense of paragraph one, and therefore, in the case of exempt religious, the permission of the Holy See is needed. This is the reason why Larraona [35] says that he cannot understand a filial house erected outside of the diocese where the principal house is located. For all purposes such a " filial house " will have to be organized as a moral person of its own. Flanagan very well says: " If the community of a proposed house will be unable to recur easily and frequently to a true superior, its establishment as a filial house will be more apparent than real." [36]

Nowhere in the common law is there a prescription that forbids religious to own other houses or buildings which could be called

[33] Cf. Goyeneche, *CpR.,* XVI, 313.

[34] *CpR.,* V, 432.

[35] *CpR.,* V, 432.

[36] *Op. cit.,* p. 32.

filial houses in the broad sense, but which in no way have the nature of a religious house. These houses can be established for a number of purposes, such as a lodging place for guests, a farm, a summer or health resort without permanent or habitual residents. To these places the prescriptions of canon 497, § 3, cannot be applied, for the law speaks only of " religious " hospices, etc. and these are not " religious ".[37] According to O'Brien, " the right of religious to acquire and hold such properties without the approval of the local ordinary is clear from canon 531, which states that every institute, every province, and every house is capable of acquiring and possessing property with fixed or founded revenues, unless their capacity to do so restricted by rules or constitutions." [38] It seems, however, that such an interpretation of canon 531 does violence to the letter of the canon. Canonists generally say that there is nothing prescribed by the Code about them. The best light for the understanding of the law about these places is found in the traditional pre-Code and canonical interpretation of the term " hospice ", a word used in canon 497, § 3. The history of this particular type of establishment will make clear also the reasons for applying the same principles to farmhouses, summer and health resorts, etc. There is no need to stretch the meaning of the term " hospice " as Augustine does.[39] What is in a name? Canon Law is not too specific as to language in our case; but it is accurate, if not explicit, about the realities it means.

The monastic Fathers, embracing the letter of the Gospel about giving pilgrims and the poor shelter for the night, and in keeping with the rules of Saint Benedict, Saint Isidore and others, established next to their monasteries guests houses. The number of guests entertained there, especially during jubilee years, run into the thousands. After the middle ages, practically all religious began little by little to build similar, but smaller places for themselves. Usually they chose for such buildings places where they had to travel, cities or towns where they had no convents and through which they had to pass often. In imitation of the guest houses of the early monastic Rules, these places were also called hospices.

[37] Augustine, *A Commentary on the New Code of Canon Law*, 4 ed. (1929) vol. III, p. 93.

[38] *Op. cit.*, p. 109.

[39] *Op. cit.*, III, 92.

These lodging places served only for transients, so that the religious could spend the night safely and without need of seeking lodging somewhere else. These houses were very small; they had accommodations for two or three people only. There was no one there in permanent residence and no regular life was observed; they had no church and no bells, no rule, no superior, no Mass, no sacraments. These houses were entirely secular and private. But abuses began to creep in. Under the name of hospices, establishments which for all practical purposes were religious houses were erected without obtaining the required permissions and without keeping the prescribed formalities. This led to a more concrete and precise definition of the strictly so-called hospices. A rule was made that if these lodging places had permanent residents following a rule of life, and Masses were said publicly, permission from the local ordinary was needed for their establishment.

From various documents issued by the Rota and by the Sacred Congregation of Bishops and Regulars during the XVII and XVIII centuries one may obtain a rather complete picture of the negative and positive characteristics of a true hospice.[40] The following things were forbidden in a hospice: To have a church or public oratory, to say Mass for the public, to administer the sacraments to them, to preach the word of God, to perform parochial functions, to conduct funeral services and to have a cemetery. The hospice had to be established only for the convenience of traveling religious, a few in number at one and the same time, who would not be bound to keep the regular discipline, and where there could be no superior of any kind. It was permitted to have a small interior oratory to say the prayers and to offer Mass privately.

According to Reiffenstuel[41] no permission from the Bishop was needed and no formalities had to be observed for their establishment. The law for the erection of religious houses did not apply to these hospices. As a consequence these places did not fall under the authority of the local ordinaries, except as secular property belonging to a religious institute. Religious had a legitimate right to build, buy, sell, transfer and destroy these hospices as they pleased. The several constitutions and decrees issued during the entire XVII century and the two dated in the XVIII century limiting the free

[40] Cf. Simeone, *op. cit.*, p. 173.

[41] *Ius Canonicum Universum*, Romae, 1831–34, vol. III, tit. 48, n. 47.

right to establish hospices were directed exclusively against abuses, and did not change the law about this type of hospices.[42]

The transition from this law to the canonical period is controlled by canon 6, n. 2, which states that when a law is derived from pre-Code legislation, the previous accepted interpretations of the latter are to be accepted.

Therefore, the pre-Code interpretation of the term "hospice" used in canon 497, § 3, must be retained. Hence, it follows that the prescriptions of this paragraph do not apply to true hospices. Hence, no permission from the local ordinary is needed for the establishment of this kind of lodging houses for religious, except possibly in the case of religious of diocesan right. These lodging places are entirely secular.

The right of the local ordinary over a diocesan congregation is based on the provisions of canon 492, § 2, according to which a diocesan congregation is entirely subject to his jurisdiction. And so there seems to be no reason for allowing a diocesan institute to establish secular places without authorization of the local ordinary.

Maroto describes a properly so-called hospice as a house intended to serve for the lodging of traveling or sick religious, but where no form of religious life is observed.[43] These hospices are, beyond doubt, he says, filial houses.[44] This last statement leads to the conclusion that the permission of the local ordinary is needed for its erection. Could this mean that he is against the writer's claim that hospices can be secular places beyond the reach of the prescriptions of canon 497? Far from it. Maroto is evidently speaking about permanent establishments, which cannot be considered as principal houses. This is what he intends to prove. And his conclusion is that the hospices he describes are not principal houses, they are secular places. This is evident from note 11 in the same page of his article. There he quotes Vermeersch's explanation of the conditions required for a principal house. (He calls it a convent.) Then he goes on to say: "The following are not convents (principal houses): 1) A dwelling occupied by religious expelled from their house while they are seeking a domicile; 2) Farms where one or two religious are in charge of the administration; 3) A villa where

[42] Simeone, *op. cit.*, p. 178.

[43] *CpR.*, V, 124.

[44] *CpR.*, V, 125.

religious go on picnics or for recreation; 4) A hospice for the benefit of traveling religious or for religious visiting frequently on business." Canonists, Maroto included,[45] are practically unanimous in declaring the places mentioned under numbers 1-2-3 to be less than filial houses, not subject to the prescriptions of canon 497, § 3. Therefore, the hospices mentioned in number 4 are not filial houses. One must admit that Maroto's statement means that hospices are never principal houses; they can be either filial houses or secular places.

Canonists speak of a variety of places which religious can establish but which are not religious houses. Augustine[46] describes them aptly as follows: 1) Lodging-houses for guests, 2) Summer and health resorts for religious, and 3) rural houses inhabited by a lay brother as farm boss for the institute. Any real estate purchased as an investment, not for actual residence of the religious, evidently falls under the same category.[47] These places are not subject to the canonical visitation of the local ordinary.[48]

It would be a mistake to try to change the nature of these places without meeting the requirements of the common law. They are not " religious " houses and therefore cannot be given the rights and privileges of such. A practical case could be that of a small group of religious sent to study in a city where their community has no canonical establishment. Canon 606, § 2, allows the superiors to permit their subjects to dwell outside a house of the institute for more than six months without recourse to the Holy See. Could the institute purchase a building in that city and authorize the students to live there without any permission from the local ordinary? The answer has to be negative.[49] Such an arrangement offends against the provisions of canon 587, § 4. According to Goyeneche[50] and Jone[51] it would also be contrary to the prescriptions of canon 497,

[45] Cf. *CpR.*, V, 126.

[46] *Op. cit.*, III, 93.

[47] Wernz-Vidal, *Ius Canonicum*, III, 70.

[48] Wernz-Vidal, *op. cit.*, III, 429.

[49] Cf. Goyeneche, *Quaestiones Canonicae de Iure Religiosorum*, Neapoli, 1954, vol. I, p. 111.

[50] *Ibidem.*

[51] *Commentarium in Codicem Juris Canonici*, Paderborn, 1950, I, 389.

§ 3, which forbids to build or open a hospice without the written permission of the local ordinary. Evidently Goyeneche bases his argument on the fact that this house of studies is not a true hospice in the sense explained above. And in that he is right. A lodging place for permanent residence, as that of the students, falls within the letter of canon 497, § 3. To think differently is to change the very nature of the non-religious house. It was precisely this type of abuse that occasioned the publication of several pontifical constitutions prior to the Code of Canon Law forbidding the establishment of houses under names which indicated a place secular in nature, while in reality they were a foundation which should be authorized by the local ordinaries, and possibly by the Holy See. Such houses of studies, when not established as principal houses, are filial houses in the strict sense, and are subject to the provisions of canon 497, § 3.

What precedes may be summed up in the words of Flanagan: "... houses which are to be used for merely secular purposes and in which no permanent community is to reside do not require even this special written permission of the local ordinary. Thus, villas, farmhouses, hostels, which are intended solely as places of rest and shelter for members of the religious institute, and other similar buildings, are not included within the scope of canon 497, § 3." [52]

Now briefly, the answer to question number one is as follows: This summer resort is not a religious house, neither a principal nor a filial house. It is a secular place. No permission from the local ordinary is needed to open the place during the summer months to the students of theology of the institute who purchased the property.

The Oratory

The second question asked in our case is the following: May the priests staying with the scholastics or visiting there during the summer celebrate Mass in the room converted into an oratory?

According to the common law, and aside from what the local ordinary and the Holy See may allow, Mass is to be said in a church or in public or semipublic oratory.[53] Therefore, the law concerning

[52] *Op. cit.*, p. 99.

[53] Cf. canon 822.

the erection of churches and public or semipublic oratories must be considered.

Canon 1162 is explicit enough in excluding the right to open a new church without the consent of the local ordinary. Canon 1191 extends the prescriptions of canon 1162 to public oratories. But canon 1192, § 1, indicates another possible authority that can allow the opening of semipublic oratories, namely religious ordinaries. Hence, one may ask: Can religious ordinaries allow the erection of a semipublic oratory or perhaps a private oratory in their own non-religious or secular places?

The private oratory where daily Mass could be said is out of question. Only the Holy See, that is, the Sacred Congregation of the Sacraments, and no longer the Sacred Congregation of Rites as in the past, can authorize the erection of a private or domestic oratory where Mass could be said daily.[54]

There is no doubt as to the law on semipublic oratories concerning non-exempt religious. Canon 1192, § 1, speaks only of ordinaries, who according to law are, besides all local ordinaries, the major superiors in exempt clerical religious institutes. Therefore, superiors of non-exempt clerical institutes have no authority to open semipublic oratories in secular places which belong to their community. This, of course, extends also to their religious houses, without prejudice to the provisions of canon 497, § 2.

Regarding exempt religious, canon 1192, § 1, gives powers to their ordinaries, or major superiors,[55] to erect semipublic oratories. These powers refer only to oratories in exempt places under their jurisdiction.[56]

When it is question of erecting a semipublic oratory, not in their religious houses, but in a resort where members of the institute go for their relaxation and which is not a religious house, there is a special difficulty. It seems that religious ordinaries have no power to erect semipublic oratories in such places.[57]

As Feldhaus affirms,[58] by common law, permission of the local

[54] Cappello, *De Sacramentis,* 4 ed., 1945, I, 668.

[55] Cf. canon 198, § 1.

[56] Cf. Bouscaren-Ellis, *Canon Law—A Test and Commentary,* 2 ed., Milwaukee, 1953, p. 660; Schaefer, *op. cit.,* p. 237; Goyeneche, *CpR.,* XII, 443.

[57] Goyeneche, *CpR.,* XII, 443.

[58] *Oratories,* The Catholic University of America Canon Law Studies, n. 42, Washington, D. C., 1927, p. 112.

ordinary must be obtained in order that religious may erect semipublic oratories in farms, villas, hospices, etc.

However, according to canon 4, privileges granted by the Holy See before the Code, not revoked and still in use, remain in effect unless expressly revoked by the Code.

In order to interpret correctly the more ancient decrees applying to sacred places, one must always bear in mind that the expression " private oratory of religious " means precisely the same as the expression " semipublic oratory " defined in canon 1188, § 2, 2, of the Code.[59]

Before the Code, at first the law did not allow religious to open an oratory, even a private one, without the permission of the local ordinary. Then, a more liberal interpretation of the law became common; the law took a negative form and forbade the opening of an oratory where Mass for the public would be said without first obtaining the permission of the local ordinary. At a later date, Regulars were given the right to open semipublic oratories where the faithful present could fulfill the precept to hear Mass.[60]

In virtue of special privileges granted by Gregory XIII to the Society of Jesus, by Clement XII to the Carthusians and by Benedict XIV to the Dominicans, these religious institutes, and those to whom their privileges were communicated, could with the permission of their major superiors erect semipublic oratories in farms, villas, hospices, and in any other place where their religious reside even temporarily. No authorization of the local ordinaries was needed.[61]

It is the common, if not the unanimous opinion of canonists, that all Regulars had the privilege of opening oratories or chapels in their summer and health resorts, etc., without the permission of the local ordinary.[62] These oratories or chapels were exempt from his visitation.[63] This privilege is still valid today.[64]

[59] O'Brien, *op. cit.*, p. 135.

[60] Simeone, *op. cit.*, p. 220.

[61] Cf. O'Brien, *op. cit.*, p. 138.

[62] Many, *Praelectiones de Locis Sacris*, Paris, 1904, n. 107.

[63] Sacred Congregation of the Council, in causa *Tarvisina*, April 17, 1649.

[64] Schaefer, *op. cit.*, p. 819; Goyeneche, *CpR.*, XII, 443; *Coronata, Institutiones Iuris Canonici*, Romae, 1939, II, 67, note 1; Vermeersch, *Epitome*, I, 578, and II, 348; O'Brien, *op. cit.*, p. 138.

The chapels erected in a country house or villa of a religious community come under the definition of a semipublic oratory.[65] It is not clear why Coronata [66] lists these oratories as public.

Another point even less clear is whether the privilege to erect semipublic oratories in secular places of exempt religious extends to Regulars only or to all exempt religious without distinction. Only Vermeersch [67] and Augustine [68] are quoted as favoring the more extensive interpretation of the powers to erect an oratory. And what makes it still more difficult to understand is that Augustine bases his interpretation on canon 1192; therefore exempt religious, according to him, have ordinary powers to erect semipublic oratories in farmhouses and similar places owned by exempt religious.

The only possible explanation, it seems to the writer, is that there exists a confusion of terms. Possibly one could find the answer in Beste's statement: " . . . in places which depend from the monastery," [69] which makes them filial houses. But this interpretation throws the case back to canon 497, § 3; and our case is concerned with secular places, and not filial houses.

Coronata [70] does not make any distinction between exempt religious in general and Regulars, neither does it appear from the context what is his exact meaning. However, Goyeneche,[71] who quotes him as the representative authority in this matter, speaks only of Regulars, as is evident from the question he is answering: " Whether a Major Superior of a religious *Order* . . ."

Regatillo,[72] Simeone,[73] Goyeneche,[74] Schaefer,[75] and Beste [76] are

[65] Creusen, *Religious Men and Women in the Code,* 5 ed., Milwaukee, 1953, p. 100.

[66] *Op. cit.,* p. 67.

[67] *Epitome,* II, 498, 2.

[68] *Op. cit.,* VI, 75–76.

[69] *Op. cit.,* p. 574.

[70] *Op. cit.,* p. 67.

[71] *CpR.,* XII, 445.

[72] *Jus Sacramentarium,* 2 ed., Sal Terrae, 1949, p. 134.

[73] *Op. cit.,* p. 220.

[74] *CpR.,* XII, 445.

[75] *Op. cit.,* p. 851.

[76] *Op. cit.,* p. 574.

very precise in extending the privilege only to Regulars.

The brief of Pope Gregory XIII, whereby the privilege was granted to the Society of Jesus, states that Masses can be celebrated in these oratories.[77] This privilege was extended to all Regulars by communication.[78] According to the interpretation of this privilege by Mostaza,[79] aside from the limitations imposed by Canon Law, only major superiors have the power to prevent the exercise of certain functions in the semipublic oratories of their institutes. Therefore, all religious enjoying the privilege of Gregory XIII may, with the permission of their own superiors, conduct sacred functions in their semipublic oratories wherever situated, whether in a religious house or in villas, farms, etc., or in any place where the religious even temporarily reside.[80] Local ordinaries may not interfere with the exercise of this right.[81]

Superiors who have authority over the semipublic oratory may allow the faithful to assist at Mass there. According to canon 1249, the precept of hearing Mass is fulfilled by being present at Mass celebrated in a semipublic oratory. Were anyone to object to this faculty of Regular Major Superiors on the grounds that these oratories are semipublic only by privilege and therefore in a limited sense, still the faculty would be the same by virtue of the privilege. According to Regatillo, " Provincial Superiors of Regulars may, by privilege, erect chapels in their houses, schools and other places where some members of the community reside; in these chapels many Masses may be said daily, even by priests not members of the institute, and all those who hear Mass there fulfill the obligation of hearing Mass. Likewise, they may erect chapels in their farms or rural houses, where the faithful may fulfill their obligation to hear Mass." [82] Goyeneche [83] is of the same opinion.

Therefore, the answer to question number two is the following: The major superiors of all Regulars may erect a semipublic ora-

[77] Cf. Piatus Montensis, *Praelectiones Iuris Regularis*, 2 ed., II, 231.

[78] Many, *op. cit.*, p. 190.

[79] *Periodica*, XII, 145*.

[80] O'Brien, *op. cit.*, p. 140.

[81] Ojetti, *Synopsis Rerum Moralium et Iuris Pontificii*, 4 vols., 3 ed., Romae, 1909, p. 2936.

[82] *Jus Sacramentarium*, p. 134.

[83] *CpR.*, XII, 446.

tory in their secular places, such as a summer resort for their scholastics. Masses may be said there even by visiting priests not of the institute; and the faithful may fulfill there the obligation to hear Mass. None of these things require the permission of the local ordinary.

Reservation of the Blessed Sacrament

The last question submitted above concerns the reservation of the Blessed Sacrament in the semipublic oratory erected in a summer resort.

In this matter canonists are of one opinion: It is not permissible to keep the Holy Eucharist without permission of the Holy See in semipublic oratories erected in farmhouses, hospices, resorts, etc., when these are mere secular places, although intended for the exclusive service of religious.[84] When these places are occupied by religious only during certain times of the year, like a summer resort during the time of summer vacation, permission to keep the Holy Eucharist will be given only *per modum actus*.[85]

Privileges and immemorial customs entitling some institutes to reserve the Blessed Sacrament in their semipublic chapels have not been revoked by the Code.[86] It is worth noticing that Regatillo, when speaking of the reservation of the Holy Eucharist, says nothing about the privileges of Regulars. That leads one to believe that there are no general privileges in existence. After stating the prescriptions of canon 1265, and that the local ordinary may allow the Blessed Sacrament to be kept in filial churches for the care of souls where an immemorial custom exists, and that It may be kept also in the oratories of Bishops and Cardinals, Regatillo simply affirms that the Blessed Sacrament may not be kept anywhere else without an apostolic indult.[87]

Therefore, the answer to question number three is the following: It is not permitted to keep the Blessed Sacrament in the semipublic oratory of the summer resort without permission from the Holy See. The indult will allow the reservation of the Blessed Sacrament only *per modum actus*.

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[84] Cf. Koster, *De Custodia Sanctissimae Eucharistiae,* Romae, 1940, p. 196.

[85] Koster, *op. cit.,* p. 201.

[86] Cappello, *De Sacramentis,* 4 ed., 1945, I, 289; O'Brien, *op. cit.,* p. 142.

[87] *Op. cit.,* p. 216.

RESPECT FOR THE RELIGIOUS STATE
(Canon 487)

One of the most practical canons in the Code of Canon Law and deserving of frequent and serious reflection is canon 487. It prescribes respect for the Religious State thus:

> Status seu stabilis in communi vivendi modus, quo fideles, praeter communia praecepta, evangelica quoque consilia servanda per vota obedientiae, castitatis et paupertatis suscipiunt, ab omnibus in honore habendus est.

If proper study and respect for the contents of this canon were shown by all the faithful, then there would be no lack of religious vocations and the progress of the Catholic Church would be, therefore, more advanced. A more profound study and better understanding of such vital matter to the progress of the Church should be the concern of all the faithful.

The Mind of Christ Relative to the Religious

The progress of the Church was uppermost in the mind of Christ. The religious who were to contribute so much to the progress of the Church, therefore, could not be absent from Our Savior's mind. We search in vain in the Four Gospels for religious rules and constitutions, but we can find them in the Most Sacred Heart of Jesus. The Holy Spirit did not inspire the sacred writers to express completely what was in the Savior's Most Sacred Heart, but the Holy Spirit did direct them to lay the foundation upon which the most beautiful edifice of the religious life would eventually be built. On the corner stone for the religious edifice those impressive words of Saint Paul could be inscribed:

> Humiliavit semtipsum, factus obediens usque ad mortem, mortem autem crucis. Philipp. 2, 8.

While Christ's mind relative to the religious took many, many years to express itself, yet His Most Sacred Heart was always burning with profound love for those who responded to His invitation to join the religious ranks.

Christ has extended a standing invitation to all youth when He addressed the young man and said to him: " If thou will be perfect,

go give thy possessions to the poor, then take up thy cross and follow me." The condition attached to this invitation is for one to seek perfection by following Christ more closely. Naturally, to oppose the great evils of the world, Christ wants his selected religious to mark their life by the three religious virtues of obedience, poverty and chastity.

Ever since Christ died on the Cross on Calvary men and women of every age and continent have striven to imitate Christ according to the Savior's wishes on the Cross. While the natural law inclines every son and daughter of Adam and Eve to select marriage as a way of happiness, yet there are those who see in the crucified Christ another road to greater happiness in the closer imitation of Our Savior on the Cross.

"I thirst" spoken by Our Savior from the Cross will ever be an inspiration for many boys and girls to choose the religious state even if it does call for suffering and sacrifice.

The Progress of Religious Life

The sixth, thirteenth, sixteenth and twentieth centuries are the Golden Ages in the development of religious life in the Church. Pope Saint Gregory the Great promoted and stabilized the religious state and gave it a new impetus so that the progress of the Church of his time records many victories and expansions. This progress of his times would eventually be stopped for a few centuries, but it would again be awakened and take on a new vigor in the thirteenth century under the leadership of Saint Dominic and Saint Francis of Assisi. Paganism would try in the next two centuries to stop the Dominicans and the Franciscans in their labors for the progress of the Church, but they would be reenforced in the sixteenth century by the Society of Jesus not only to overcome paganism, but also to give battle to the heresies coming up within this century. The Council of Trent in the sixteenth century set a new foundation for religious Congregations and marked this century with great progress, especially in the life of men and women religious.

Although the twentieth century has only a little over half gone by, yet its religious life compares even with the greatest centuries. The three great Popes, Saint Pius X, Pius XI and Pius XII gave this century such a start and impetus that we may safely predict that this will be the greatest century in the progress of religious life. Saint Pius X with his new doctrine on Frequent Holy Com-

munion has revolutionized the Catholic world and inspired little children to begin their life in union with Christ from their tender years, which has contributed very much to the steady increase of vocations in our country and in the whole world. Pius XI with his great encyclicals, especially on "Chaste Marriage" and "Holy Priesthood" has contributed much to illucidate the ideals of Matrimony and the Holy Priesthood. Pius XII by his splendid writings before he became Pope and more so after he ascended the throne of Saint Peter has inspired youth to join the religious life and to follow Christ in the state of perfection. His recent encyclicals on "Bride of Christ" and "Virginity" will always remain running fountains from which youth will draw nourishing water to lead many of them to enter the religious state. His recent mitigated decrees on Fast before Holy Communion promise a closer union with Our Eucharistic Lord which will, no doubt, lead many to embrace the religious life.

The Idea of Religious Life in the Mind of a Child

The Heavenly Father has shielded His children from all evil for about the first two years of their life. Moreover, the paternal love of the Heavenly Father still extends His protecting hand for a few years more to keep His children from falling into grievous sin. Within this innocent period of a child's life Christ calls many to follow Him in the religious life. Some of those little ones are so sure that they want to be a priest or a sister that from the way they express themselves one can readily see the perfect motive upon which their vocation is based. Some seem to understand and appreciate the three holy vows of chastity, poverty and obedience even better than a novice about to pronounce vows. Whence come such beautiful ideals in the mind of the child? Surely, such delicate children are not following just the natural law of innocence, for there we see a beautiful growth and development in the mind of a child that gives promise of a religious vocation. Some of those children will tell you that this beautiful idea of their vocation came on the day of their First Holy Communion. Fortunately, many such children go frequently to Holy Communion in order to safeguard this grace felt in their young soul.

Some children have perfect concepts of religious ideas from their tender years. One of those ideas is that of a religious vocation of

which they are so certain that only some evil influence coming from without could change their decision. The high respect children show to priests and nuns comes from their unadulterated idea of religious life. Their simple expressions of respect for the religious can teach adults a good lesson they will not find in books. Once I learned a good lesson from a child about 6 when I had asked him in class this question: "Where does God live." His answer was: "In every good man's heart."

The Attitude of Parents Towards Vocations

We may divide parents in three types as to their children's vocation. The first give every encouragement and pray for their child's religious vocation. Such fulfill their duties as parents and are blessed by God for their generosity. How much more will those parents be blessed who offer not only one child to God but even several. God will never be outdone in generosity. Such parents do comply with canon 487 and hold religious state in proper honor.

There are other parents who are indifferent to their child's vocation. They do not discourage their children from religious life but at the same time they offer no help whatsoever. Such parents are not fulfilling the law of the Church which puts an obligation to instill in the mind of the child respect and understanding of the religious state.

It is, however, the third class of parents who do great harm to the child and to our Holy Mother the Church, and they are those who oppose their child's religious vocation. Very few such parents can plead ignorance. Consequently, much evil may follow to families of such parents for the opposition to their child's religious vocation. The strongest argument perhaps that can be adduced to convince such parents to change their wrong attitude toward their child is the recalling that within our own generation of forty years we have sacrificed about one and one-half million of our young men during two major wars, and such bloody sacrifice, we know, is not as pleasing to God as one offered to Him by the religious on the Altar during the Sacrifice of the Holy Mass. If parents were more generous and permitted their children to choose their own vocation, such huge bloody sacrifices on battlefields of war would not be necessary.

The Need of Religious Vocations

One of the great glories of Catholics in the United States is the large number of religious serving our churches, schools, hospitals and other institutions. Though we Catholics number but about one-sixth of the entire population, yet our charitable institutions proportionately are very large indeed. The religious who serve those institutions are the admiration of the whole nation. Many American citizens cannot understand how we Catholics can get so many to serve those charitable institutions for so little pay.

At present there are about 50,000 priests, 10,000 brothers and 160,000 sisters serving our institutions. The total number is large indeed—about 220,000. But even this large number is not enough to supply all needs and the progress which the Church would like to make here in this country. Were we to double the number of the present priests, brothers and sisters, still it would not be too much, for we can always send the extras to the missions in foreign fields who are crying for more priests, brothers and sisters. The harvest is great indeed, but the laborers for so great a harvest are too few.

Of about 500,000,000 Catholics in the world, only about one of every 500 is serving the Church in the religious profession, for there are about 400,000 priests and brothers and about 600,000 sisters in the entire world. We should not only respect the religious but also we should study this all important question and try to remedy it as best as we can. While the standard of living in other countries may not be much of our concern, we cannot say that of the religious condition of those peoples, for they are our brothers and sisters whom we hope to meet in our future home of heaven.

Missionaries, laboring in foreign lands, deserve special respect, for they are serving the Church like our soldiers with additional sacrifice. Although it is much harder on the parents to see their sons and daughters go to distant countries, yet heaven should be thus much nearer in their hearts, for that is the missionaries' goal.

There is a procession of beautiful souls entering heaven at the moment their mission ends here below, and in that procession of happy souls must be counted a large number of the religious, especially those that gave their life to the foreign missions. If our youth would frequently reflect and ponder over this great reward, many, no doubt, would willingly choose the religious state in order to make this procession of happy souls larger and the victory for

Christ greater. Christ arose the third day after His death, but He permits His chosen souls to enter heaven at the point of death. "This day thou shall be with me in paradise" was promised by Christ to the good thief on the cross for sympathy shown to the dying Savior, but not less will be given to souls who have given their whole life to Christ in sympathy for the salvation of others.

That there are plenty of buds which could mature and turn into religious vocations, no one could deny; but many of the buds never mature and others fall by the way side and are lost to the Church. The enemy of the Catholic Church never sleeps, but is quite busy day and night trying to diminish the laborers of Christ's vineyard. Be that as it may, yet much can be done to help our youth to reach the state of perfection in the religious life, if we were more aware of the great problems of religious vocations, especially the great need for missionaries in foreign lands.

Spiritual Directors

Spiritual directors, it seems to me, on the whole have not given this huge problem the study and attention it deserves. The great possibilities of converting the world lies within the proper training and directing of our youth. If we could place the religious vocation in first place where it should be, then we could save many more vocations for the Church that are now misdirected to other channels and professions because somehow the religious vocation is not receiving its proper respect and honor which Canon Law prescribes.

I have met doctors, lawyers and even priests who discouraged religious vocations. Perhaps there might be some excuse for a doctor or a lawyer to place their selected professions above all others, but there is no excuse whatsoever for a priest to fail to see just where his profession belongs—on top.

Many spiritual directors seem to take an attitude that the religious vocation is a supernatural gift of God, therefore it needs nothing more to bring it to fruition. But how unsound is such a theory! A soul needs much help not only to reach the religious state, but also it needs very much assistance and guidance to persevere therein.

Modern obstacles to religious vocations are on the increase. Years ago there were not such problems as television or smoking

for girls. Now these forms of recreation have influenced many a boy and many a girl to give up the call to the religious life, some perhaps because they lacked the necessary guidance of a spiritual director. These problems are baffling even to a spiritual director, but how much more to a boy or a girl of fifteen? How much more encouragement those boys and girls need who have contracted such innocent habits, yet which require much courage and guidance to evaluate them in quest for genuine happiness. Souls with such a handicap need very much to be enlightened by their spiritual directors.

Vocational Literature

Perhaps no other influence does so much harm to a soul having a religious vocation as bad reading. This has been the traditional enemy of all virtues, but especially it has been the greatest enemy of the virtue of chastity. The number of books, magazines and newspapers in circulation is very large indeed, but the good reading material is, unfortunately, very small.

The number of books guiding youth to a religious vocation is sadly deficient. The religious vocation is the number one profession, but the number of books on this subject almost puts it in the last place. In recent years there have been some books with a new approach to religious vocations by way of telling an inspiring story of some priest or nun just how they have been led to their respective religious vocations. Several years ago I told my story how a nun helped me to reach the holy priesthood in the book called "Sister Helen—The Lithuanian Flower" (Wagner Co. New York), and I received many letters from the readers telling how the reading of this story helped them to reach the religious state. Many more such stories of ideal priests and nuns could be of great help in guiding the youth of our country towards the religious ideals.

Almost every national magazine has a large section on the question of marriage and short stories on marriage are found not only in magazines but even in newspapers. Of course, this is the most popular question and youngsters are very much interested in reading such literature. But there are many boys and girls who want to read something relative to their higher calling, yet they search in vain for such reading in our modern libraries. Book reviews on religious vocations should be treated in a separate section where youth could conveniently find them.

A national magazine on the guidance of youth to religious vocation is our present urgent need. Let us pray that it will be forthcoming very soon.

Respect for Parents and Authority

Not a few vocations to religious life are lost because the virtue of respect for parents and authority is on the decline. Children have a natural virtue of respect for those who represent God to them; but modern evil tendencies crave for complete independence before the child reaches maturity when he can take care of his own life. This tendency of disrespect is more and more noticeable in the way youngsters are breaking traffic regulations by speeding. More and more youngsters are found in the court rooms facing the judge for some traffic violation. This need not be and it should not be, if the child was better trained at home to respect his parents and all legitimate authority.

The Church inculcates this virtue of respect for authority in her frequent admonitions and liturgical prayers. A little more sincerity and attention to those salutary principles of the Church would help much to diminish violations of these important virtues and become a power of guiding our youth to higher ideals and religious vocations.

The vow of obedience would become easier to keep in the religious life when the child has been trained from early childhood to obey its parents and to respect them as representatives of God. The grace of perserverance in the religious life, no doubt, depends much upon the virtue of obedience acquired in the home of childhood.

Devotion to Our Blessed Lady

Spiritual directors, I believe, could make more use of the patronage of Our Blessed Lady in fostering devotion to her among those boys and girls who have indicated in some way that they are thinking of choosing the religious state. Perhaps there is no other battlefield on which the contest is fought more fiercely than in the arena of a soul striving to choose the religious state of perfection. First come doubts of false humility that one is not worthy of such a great grace; then come temptations of the flesh that one cannot choose, being human, the angelic state; then the temptations of

wordly goods, which for so many, are so difficult to give up; finally, the temptations of pride which urge one not to give up that which is his greatest possession—liberty.

Burdened with such temptations a youthful soul finds itself encompassed as within four prison walls without hope of escape, except for a slight possibility that someone may come around and unlock the gate. The spiritual director has the key to solve and unlock and lead out safely to the religious life many souls engulfed in such temptations. But it is not sufficient to unlock the prison gate for such souls; they must be given a guide even when they arrive into a new world of religious activity.

This special guide for boys and girls in the religious state is Our Blessed Lady, who like the sun in the skies illuminates the way leading to her Divine Son and to a life of perfect union with Him. There are three rays of light in Our Blessed Lady's life that should be a constant meditation for boys and girls who are thinking about choosing the religious state.

The first ray in the life of Our Blessed Lady which should be frequently pondered over by those inclined to become religious is the one that depicts her in conversation with the Archangel Gabriel announcing to her that she was to become the Mother of the Son of God. That relation of Our Blessed Lady to Christ is to be imitated by every one who becomes a religious; it is a bond of perfect love that is made possible now for imitation for so many souls. In marriage the bond of union will eventually be broken by death, but the perfect imitation of Our Blessed Lady's bond with Christ will never be severed even in the hour of death, for then it will only change into a more perfect union in heaven.

The second ray in the life of Our Blessed Lady which should be frequently meditated upon is the one that depicts Our Blessed Lady in conversation with her cousin Elizabeth. No more perfect companionship could ever be conceived than that which we find here of Elizabeth with Our Blessed Lady. This beautiful relation is best imitated by the religious and has a very strong drawing power over youthful souls, for it is a great reality and like the works of great artists inspires one to imitate and to practice this virtue of perfect companionship.

The third ray of light in the life of Our Blessed Lady which should be frequently contemplated is the one that depicts the scene of Christ's Nativity at Bethlehem. The grace given to Our Blessed

Lady to give birth to the Son of God and the grace offered to a soul to imitate Mary's grace perfectly has a very great similarity. No one need feel that he will lose some happiness by giving up marriage, worldly possessions and liberty for this beautiful imitation of Our Blessed Lady in Christ's Nativity, for this is a participation in Our Blessed Mother's life exceeding all other human happiness.

Devotion to Our Blessed Lady works miracles in youthful hearts, directing them to choose the religious state even when such a step seems almost impossible.

Devotion to the Most Sacred Heart of Jesus

As we study the Most Sacred Heart of Jesus, we find there two great gifts very intimately related flowing generously to humanity: they are the gift of the true Faith and the gift of a religious vocation. According to the common teaching of the Fathers and Doctors of the Church, the gift of a religious vocation comes first after the gift of Baptism. The Fathers of the Church, no doubt, saw so many conversions to the true Faith depending upon the gift of religious vocations. It seems that Christ would have it so that in proportion as we increase our religious vocations, the conversions to the true Faith will follow.

At present, in the United States we are receiving about 140,000 converts each year, a large number indeed, but it is not the maximum number possible. The Most Sacred Heart of Jesus wants the conversions of all the human souls and wishes them to come into the true Faith. We could double and triple the present annual conversions in the United States, if we treasured a little more the gift of religious vocations.

In non-Catholic religious communities we find not only lack of Faith, but also the lack of souls devoted to religious ideals as we find so many devoted individuals in the Catholic Church. The Most Sacred Heart of Jesus, indeed, has been very generous to the Catholics, but we have not as yet exhausted the great goodness of the Most Sacred Heart. There are enormous possibilities as we gaze upon the present world and compare how some countries are almost entirely Catholic, while other great nations have just a few

souls living in the true Faith. Can anything be done for those countless souls who do not know the true Faith nor the richness of the Most Sacred Heart of Jesus? Yes, much can be done by increasing our religious vocations to the number where we can send those countries spiritual help and shape them according to the form of the true Faith and make them not only more pleasing to the Most Sacred Heart of Jesus, but also we can inspire them to reach the higher ideals of religion, thus giving to Christ religious souls formed and fashioned according to the pattern of His Most Sacred Heart.

The United States has been blessed in many ways, and we rank at the top of all other nations in many respects. Materially, we are the richest nation on the globe; scientifically, we are most progressive. Religiously, however, we are a mixture of the good, bad and indifferent. Would that we could make similar progress in religion as we have done in finance and science. If we could but turn our energies to religion and to the fostering of religious vocations as we have done in the field of finance and science, then we could hope some day to be numbered among the elect in heaven and among its most glorious Saints.

Intensified devotion to the Most Sacred Heart of Jesus could reveal to us a new way of becoming great not only in the eyes of the world, but also before God in the accomplishment of the two great desires of the Most Sacred Heart—the conversions to the true Faith and religious vocations.

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THE INVALIDLY MARRIED LIVING AS BROTHER AND SISTER*

Invalid marriages are the perennial problem of the Chancery Office. Every year the number of appeals from people begging to have something done about their invalid unions seems to increase.

No doubt this increase is to some extent occasioned by the fact that the number of converts to the Faith is steadily increasing. Many of those prospective converts have lived for years in invalid unions which they entered in good faith. Now they realize that they cannot continue to live together as man and wife if they wish to belong to the true Faith. Hence their plea that something be done to clear the way for entry into the Church. Nevertheless, we must face the sad fact that the great majority of the cases presented for consideration involves one or sometimes two Catholics who, having attempted an invalid marriage, now wish to return to the reception of the Sacraments.

The very nature of our sacerdotal calling imposes on us the obligation to help those unfortunates. It would be a denial of the essence of our priestly vocation if we were to shrug off the problem with the unsympathetic remark, "Oh, well, they asked for it." Rather, we are moved to sympathy for those who have made a mistake and who now, honestly repentant, wish to rectify their error. We cannot condone the sin, but we can and do feel an earnest desire to help the sinner.

We can understand the temptations to attempt invalid marriages which press in upon the laity. Years ago those who secured a divorce or attempted marriage after divorce were looked upon as being something less than respectable. They were regarded as having done something socially wrong, something that the best people simply did not do. Nowadays, alas! the picture has changed. Divorce and remarriage are no longer socially unacceptable. Quite the contrary. Hollywood has glamorized the divorce court: prominent figures in civic and religious (non-Catholic) circles have given

* Paper read by the Very Reverend Matthew M. Crotty, J.C.D., Vicar General, Diocese of Baker, at the annual meeting of the Northwest Regional Chapter of The Canon Law Society of America, held at Baker, Oregon, September 27, 1956.

to it the aura of solid respectibility. The Catholic layman, whether he likes it or not, must needs live in a society where divorce and remarriage are an accepted solution to domestic problems. Unfortunately a number of them are deluded by the example of those who, to all appearances, have successfully circumvented the laws of God. They drift into invalid marriages. These are the ones who later need help when, moved by the grace of God, they wish to repent and have their marriage problem solved.

Little was written about the feasibility of the brother-and-sister arrangement as a possible solution to the problem of invalid marriages until the last few years. Those authors who treated the subject at all did so in a rather cursory fashion, insisting that this solution was one which was full of danger and which in consequence should almost never be allowed. In 1950 Very Rev. Monsignor Krol (now an Auxiliary Bishop of Cleveland) wrote an article to show that the brother-and-sister arrangement was a very practical means of allowing invalidly married couples to return to the reception of the Sacraments under certain conditions.[1] This was followed four years later by an article written by Rev. James Godley.[2] In that same year a dissertation written at the Catholic University of America appeared which dealt with the question more fully than either of the articles mentioned.[3] Each of these treatises is excellent: the writer can hope to add little if anything to the information they contain.

The idea of a man and wife living as brother and sister goes back to earliest Christian times. The Blessed Mother and her husband, St. Joseph, lived such a life. Following their example, it was by no means uncommon for married men and women who had dedicated themselves to the practice of a higher form of spirituality, to live a common life as brother and sister. But it was not until about the eleventh century that we find evidence of the brother-and-sister arrangement being used as a solution to invalid marriages, and then only in cases of impotence. Those who were impotent were advised

1 *The Jurist,* (Washington, D. C.: The Catholic University of America, 1941—), XI (1951), pp. 7–32.

2 *The Jurist,* XIV (1954), pp. 253–274.

3 Sullivan, *Legislation and Requirements for Permissible Cohabitation in Invalid Marriages,* The Catholic University of America Canon Law Studies n. 356 (Washington, D. C.: The Catholic University of America, 1954).

not to separate but to live together on a fraternal-cohabitation basis. Not until the end of the seventeenth century was this solution used as a remedy for marriages invalid for some reason other than impotence.

No particular canon in the Code of Canon Law deals with the brother-sister arrangement as a possible solution to the problem arising from an invalid marriage. However, practical norms for the application of this arrangement can be deduced from the general moral principles involved and from those canons which have a bearing on certain aspects of the question.

In the first place it must be remembered that the brother-sister arrangement is a solution of last resort. Only when no other remedy is available may its use be even considered.[4] Authors are unanimous in insisting that only very rarely may it be advised because of the danger of incontinence involved.[5] Hence, before there can be any question of allowing fraternal cohabitation between an invalidly married couple, the other possible remedies must be examined and found to be inapplicable in the case.

The ordinary remedy for an invalid marriage is, of course, to validate it either by simple validation or by a *sanatio in radice*, as the case warrants. If the union cannot be validated, the normal course of procedure is to have the parties separate entirely. However, if both parties honestly believe they are validly married, pastoral prudence may urge advisability of leaving them in good faith.[6] Finally, we have the possibility of the brother-and-sister arrangement.

The question of a temporary period of fraternal cohabitation arises frequently in connection with the validation of a marriage. In the Diocese of Baker the parties are routinely asked to agree to a brief separation *a thoro* before the marriage is validated. This is not a *sine qua non* for validation but is simply a practical means of

[4] Cappello, *Tractatus Canonico-Moralis de Sacramentis*, V, *De Matrimonio* (5 ed., Augustae Taurinorum-Romae, Marietti, 1947), n. 841, #3.

[5] Cappello, *loc. cit.*; Coronata, *Institutiones Iuris Canonici De Sacramentis* (Marietti: Turino, 1945), III, p. 929; Heylen, *Theologia ad Usum Seminarii Mechliniensis, Tractatus de Matrimonio* (9 ed., Mechliniae: Dessain, 1945), p. 705; Gasparri, *Tractatus Canonicus de Matrimonio* (ed. nova, Typis Polyglottis Vaticanis, 1932), II, p. 249; Bouscaren-Ellis, *Canon Law* (Milwaukee, Bruce, 1946), p. 568.

[6] Bouscaren-Ellis, *op. cit., loc. cit.*

impressing on the couple their complete break from a sinful past. In Pauline Privilege cases the interpellations can be licitly made only after the baptism of the non-Catholic petitioner.[7] Normally there will be an interval, perhaps a month, between baptism and the answering of the interpellations.[8] In the meantime the obligation of fraternal cohabitation should definitely be imposed on the couple, assuming of course, that they are already invalidly married and are living together, unless they agree to a complete separation *a mensa et thoro* during the interval.

A somewhat similar situation arises in Privilege of the Faith cases when the petitioner has already attempted an invalid marriage. Generally speaking there is an interval between the reception of baptism and the revalidation: here again the parties should be made to separate *a mensa et thoro* or at least to live as brother and sister. The practice of various Diocesan Curiae in preparing Privilege of the Faith cases differs. Some demand the reception of baptism, fraternal cohabitation and the promise of permanent separation if an adverse decision is given, before the case is sent to Rome. Others insist on baptism and fraternal cohabitation whilst the case is pending, without any promise of possible complete separation. Still others delay the conferring of baptism until a favorable reply has been received. This latter practice seems to be quite acceptable to the Holy Office. However, we are concerned here chiefly with the brother-and-sister arrangement as a solution for an incurably invalid marriage, not as an incidental step in the process of validating a curable marriage.

The chief reasons why authors are so reluctant to permit the fraternal-cohabitation arrangement is that the use of this remedy is dangerous: it may furnish an occasion for sin to the parties themselves and it may be a cause for scandal to others. Particular attention, then, must be given to the question of whether fraternal cohabitation can exist without being an occasion of sin and without being a source of scandal.

[7] Doheny, *Canonical Procedure in Matrimonial Cases* (Milwaukee, Bruce, 1944) II, p. 523.

[8] Doheny, *op. cit.*, p. 525, n. 7.

Danger of Incontinence

An occasion of sin may be defined as some external circumstance (book, thing, person, etc.) which attracts to and affords a facility for sin.[9] It is not difficult to see how the injudicious granting of permission to an invalidly married couple to live as brother and sister could be an occasion of sin for them. The parties are attracted to one another, have lived as man and wife, still live under the same roof and are in frequent daily contact with each other. Temptation to perform the marital act or to indulge in actions permissible only to those who are validly married could be very grave under the circumstances.

An occasion of sin can be remote or proximate. It is remote if it embraces only a slight danger of sinning and if it is one in which a person rarely sins. It is proximate if it causes a grave danger of sinning and if it is one in which, in point of fact, a man frequently sins mortally. A proximate occasion may be voluntary or necessary. A voluntary occasion is one which can be easily or with slight inconvenience overcome. A necessary occasion is one that cannot be physically or morally removed or which can be removed only with great external difficulty and with great resulting damage. From the foregoing come three principles of paramount importance to us:

1. Absolution should not be denied to a penitent living in a remote occasion of sin. As long as we live in this world, we of necessity live in such occasions.
2. Absolution should not be denied to one who lives in a proximate, necessary occasion of sin, provided he is sincerely sorry and prepared to use the means prescribed to render the materially proximate occasion formally remote. A person cannot be asked to do something that is physically or morally impossible.
3. Absolution must be denied to one who refuses to leave a proximate, voluntary occasion of sinning gravely.

Applying the principles set forth above we can see that the only hope of allowing the brother-and-sister arrangement is on the conditions (1) that the living together is necessary and (2) that means are taken to make the materially proximate occasion formally re-

[9] Prümmer, *Manuale Theologiae Moralis* (6. et 7. ed., Friburgi Brisgoviae: Herder, 1933), III, p. 321, n. 449.

mote. We will have more to say on the necessity of cohabitation when we come to consider the reasons which justify fraternal cohabitation. Here we will consider whether the occasion can be made materially remote.

Great difficulty may be experienced in weighing the danger of incontinence. The temperament of the parties, their age and state of health are amongst the factors which, in the opinion of the writer, should be taken into consideration.

If both are Catholics and both sincerely desirous of returning to the reception of the Sacraments, a more firm basis for believing they will live a continent life is present than if one of them is a non-Catholic who is resentful to what he considers interference in his private life.

The age of the parties has a very important bearing on the question. Nature has fixed no definite age at which the human desire for sex relations ceases. It is true to say, however, that those of advanced years are less easily roused to passion than are younger people. Thus, for example, one could prudently judge that a couple over seventy years of age would live continently together if they made a serious promise to do so. On the other hand it would be very difficult to see how two young people—say, thirty years old—could live together as brother and sister without relapsing into sin.

We are speaking, of course, of a normal, healthy couple: if one of them suffers from extremely poor health it can be readily understood that this fact could change the case radically. Not infrequently we meet cases where a couple who are validly married, abstain from sex relations for years because of the ill-health of one of them.

The circumstances of the couple will determine the physical household arrangements which must be made to help render the occasion of sin formally remote. There can be no question of their sleeping in the same bed. In practically all cases they must not even share the same bedroom but sleep in separate bedrooms, rooms if possible not easily accessible to one another. A very practical arrangement in cases where the couple have children living with them is for the father to share a bedroom with the boys and for the mother to share a room with her daughters.

What of a couple of advanced years living in a one-room shack? It would seem to the writer that individual beds, separated if pos-

sible by a screen would fulfil requirements. What if one of the spouses is so seriously sick or incapacitated that constant attendance is necessary? The writer is familiar with the case in which the invalidly married husband was completely paralized. It would seem that the state of health would in itself be sufficient to render the occasion formally remote so that the healthy spouse could sleep in a separate bed in the same room and thus be available at all times to undertake the role of nurse.

Of course it is understood that the parties have no right to those acts which normally precede sex relationship. Thus, for example, passionate kissing, petting or embracing would be mortally sinful for them and, under no circumstances, allowed.

Danger of Scandal

For others the fraternal cohabitation of an invalidly married couple could be a source of scandal. If the incurable invalidity of the marriage is known and if, at the same time, the parties are publicly admitted to the reception of the Sacraments it would seem that the Church is condoning a life of sin.

The problem of scandal may be a very simple or a very complicated one. If no one in the district knows of the invalidity of the marriage and if no one is very likely to find out about it, then there is no particular difficulty on this point. It is true that the marriage is a matter of public record but it is equally true that the records may be so far removed or so difficult of access that there is no likelihood that the invalidity of the union will be discovered or divulged. The couple may have been married in a far distant state or even in another country.

The problem becomes complicated when there is good possibility that the invalidity may become public knowledge. In this case the prudent judgement of those responsible for permitting or recommending the use of the fraternal-cohabitation arrangement must be the court of final appeal. It may even be possible that some few people in the district already know of the invalidity. In practice it is impossible to determine with mathematical accuracy the number of people whose knowledge of the invalidity makes the case public in the sense of canon 2197.[10]

[10] All are agreed that publicity in this case should be determined according to canon 2197 and not according to canon 1037. Cf. Krol, *op. cit.*, p. 24; Godley, *op. cit.*, p. 267; Sullivan, *op. cit.*, pp. 92–96.

Many factors must be considered in determining whether the knowledge of a few people will give rise to scandal—the size of the city or rural district, the social standing of the couple involved, the temperament of the people and especially of those who know of the problem. If the parties are socially prominent the danger of widespread talk is greater: envy frequently prompts the unjust criticism that the Church favors those who are wealthy or influential. The people who share the secret may be discreet and well disposed so that a word of explanation and a promise of silence on their part disposes of the possibility of publicity with resulting scandal. On the other hand one garrulous member of a congregation in possession of the facts may destroy completely the possibility of allowing the brother-and-sister arrangement.

Of course it may be possible for the couple to move to some place where the invalidity of their marriage is completely unknown and where there is very little possibility that the circumstances of their marriage will ever become public. In a large city such as New York or Chicago it is possible for a couple to move ten or twelve miles and by so doing cut themselves off from friends and acquaintances as effectively as if they had moved many hundreds of miles.

Even when the case is public or likely to become public there is one possibility that should not be overlooked: the possibility that people, not knowing the cause of the invalidity, may think that it is a simple defect of form case which has been validated. When they see the parties receive the Sacraments their belief will be confirmed. It would not be wrong for a priest to foster this belief by simply stating that the case was all " straightened out " or " fixed up." [11]

In concluding this section on the absolute necessity of avoiding scandal we might mention the possibility of admitting an invalidly married person or persons to the private reception of the Sacraments even when it is known publicly that the union is invalid.

[11] " Atqui in necessitate vel ex rationabili causa licet occultare veritatem *mediis non intrinsecus malis*. . . . Immo occultatio veritatis non tantum licita est, sed aliquando graviter mandatur, e.gr., praecipitur secretum commissum. Etenim verba prolata possunt habere sensum intentum; immo audiens visis omnibus circumstantiis debet hunc sensum suspicari. Unde audiens non directe et necessario decipitur, sed eius deceptio potius indirecte tantum permittitur." Prümmer, *op. cit.*, (4. et. 5. ed., Friburgi-Brisgoviae: Herder, 1928), II, p. 159.

(We are presuming that in this case the danger of incontinence is formally remote and it is impossible for the couple to move to some place where they are not known.) There would seem to be no reason militating against administering the Sacraments to them in the privacy of their own home at least during the time during which the Paschal Precept can be fulfilled.[12] Ordinarily the Church does not favor the giving of Holy Communion in private homes where Mass is not celebrated except in the case when the recipients are sick.[13] In this case however the divine-ecclesiastical precept of receiving Holy Communion during the Paschal Season would outweigh any purely ecclesiastical law governing the place where Holy Communion may be administered. *A fortiori* it would be permissible for those mentioned in this paragraph to go to receive Holy Communion in some church where they are altogether unknown.

Proportionate Reason

The mere fact that one or both parties of an invalid marriage wish to return to the reception of the Sacraments whilst continuing to dwell together is not in itself sufficient to warrant the granting of permission for fraternal cohabitation. There must be present in addition a cause proportioned to the gravity of the favor sought. Sullivan enumerates seven such causes, stating that those are the causes commonly listed by authors but that the enumeration is not taxative.[14] Those causes are as follows:

1. The presence of minor children. The proper upbringing of children requires the love and devoted attention of both parents. The presence of even one minor child could constitute a sufficient cause and the gravity of the cause increases with the number of children.

2. Scandal arising from complete separation. This cause is verified if the parties have been living for a long time as man and wife and if their separation would cause scandal to those who knew them.

[12] "Cuilibet peccatori sincere emendato et rite absoluto potest *occulte* administrari S. communio. Ita saltem iuxta praesentem Ecclesiae disciplinam." Prümmer, *op. cit.*, III, p. 64.

[13] Can. 869; S.C.R. Montis Regalis in Pedmonte, 5 jan., 1928—Bouscaren, *Canon Law Digest,* (Milwaukee, Bruce), I, p. 391.

[14] *Op. cit.*, pp. 117–124.

3. Serious injury to reputation. This cause would not hold if one's reputation was already lost or if the granting of the permission would not save it.

4. Conversion of one or both parties.

5. Grave financial inconveniences if the parties have to separate.

6. Grave illness.

7. Impossibility of obtaining a civil divorce. This cause does not apply in the United States.

Krol [15] and Godley [16] both mention only one cause to justify granting permission for fraternal cohabitation—extreme difficulty of separation. Generally speaking the causes listed by Sullivan are comprehended under the " Extreme Difficulty of Separation " established by Krol and Godley, with the exception of number 4, the conversion of one or both parties. Unquestionably, this latter is a grave cause.

A more interesting issue is this: Are advanced age or illness absolutely necessary prerequisites to the granting of the permission? Krol [17] and Godley [18] think so, but Sullivan maintains that those are not absolutely necessary conditions.[19] In practice, the view of Krol and Godley seems to be preferable. It is difficult to see how the danger of incontinence can be excluded if the parties are young and enjoy normal good health even though they promise continence and even though there are present several grave reasons urging the desirability of the permission.

Permission from Proper Authority

All are agreed that the parties involved in an invalid marriage cannot decide for themselves that they will live together as brother and sister and at the same time frequent the Sacraments. Permission from a duly qualified ecclesiastical authority is necessary.

We must remember that the invalidity of a marriage may be brought to the attention of a priest either in confession or outside

[15] *Op. cit.*, p. 26.

[16] *Op. cit.*, p. 270.

[17] *Op. cit., loc. cit.*

[18] *Op. cit., loc. cit.*

[19] *Op. cit.* pp. 120, 163.

the confessional. No one can question the competence of the confessor to pass judgment on the dispositions of his penitent. In theory, at least, he should be able to decide whether the danger of incontinence can be made formally remote and whether the danger of scandal to others is absent.[20] In practice, however, the ability of the confessor to render a prudent decision may be open to question.

His only information is that given to him by the penitent. He must take the penitent's assurance that the danger of incontinence can be effectively minimized without the opportunity of studying the attitude and disposition of both parties. He has no way of knowing whether in point of fact anything is known about the invalidity of the marriage by other parishioners. It may happen that the penitent is living in a fool's paradise, believing that his marriage problem is a secret, whereas several people in the locality are familiar with it.

Of course, if the confessor is the pastor or assistant of the parish where the couple resides, he may already know something about the situation and hence be in a position to give a well-reasoned judgment. Generally speaking, however, the confessor would be well advised to counsel the penitent to lay the facts of the case before him or some other priest in the extra-sacramental forum.

The Ordinary as the guardian of the faith and morals of those committed to his care certainly has authority to decide on external-forum cases of fraternal cohabitation. But does he have exclusive jurisdiction in this matter? Krol [21] and Godley [22] make no distinction of cases, but give the Ordinary exclusive jurisdiction in all such problems in the external forum. Sullivan, on the other hand, makes a distinction, allowing competence to the Ordinary and to the pastor as the case warrants.[23] He teaches that if a case is materially public but formally occult, if the fact but not the cause of the invalidity is known, the pastor can make the decision. If the case is both materially and formally public then only the Ordinary has authority to pass judgment.

Possibly the most practical method of dealing with external forum cases is for the Ordinary to reserve all such cases to himself. It is

[20] Cf. Bouscaren-Ellis, *op. cit.*, p. 568, n. 3.

[21] *Op. cit.*, p. 22.

[22] *Op. cit.*, p. 263.

[23] *Op. cit.*, p. 127.

highly desirable that a constant, unvarying standard of judging those cases in a particular Diocese be maintained. Again, the very fact that each case must be referred to the Ordinary makes the petitioner realize all the more clearly the gravity of his promise to lead a continent life.

Practical Procedure

Monsignor Krol has outlined a method of procedure for fraternal-cohabitation cases which is at once practical and simple.[24] When a case comes to notice, the priest obtains a standard questionnaire from his Chancery Office: the parties are interrogated separately and alone and the necessary details obtained about the marriage, the possibility of a continent life, the absence of scandal, etc. The parties are required to swear and subscribe to the following promises:

1. that under no circumstances will I ever attempt to live as husband and wife with my present consort.
2. that if I violate this promise, I will not attempt to receive the Sacraments until I have separated, or referred the matter to the Bishop.
3. that I will receive the Sacrament of Communion only in churches where my marital status is not known to the parishioners.
4. that I will explain my status to my confessor, and will report to him at least four times a year on the observance of my promise.
5. that I will take all precaution to preclude scandal from the use of the privilege for which I petition.

Needless to say, the possibility of the fraternal-cohabitation arrangement should not be broadcast, lest people be tempted to enter invalid marriages with the idea of later asking permission to live as brother and sister. It is not a panacea for all incurably invalid marriages. It is, however, a practical means under certain conditions of restoring souls to the friendship of God. The zealous pastor will recognize that it gives him an additional means of saving souls which might otherwise be lost.

[24] *Op. cit.*, pp. 31–32; Sullivan suggests some minor changes in Krol's method.—*Op. cit.* p. 164.

Decrees and Decisions

CANONICAL

UNIVERSITY OF NIAGARA

On June 21, 1956, The Sacred Congregation for Seminaries and Universities issued a decree establishing as a Pontifical University the University of Niagara.

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EDICTAL CITATIONS

October 18, 1956, the Sacred Roman Rota, with regard to a case arising in Alexandria, Egypt, issued an edict citing Mr. Alan George MacAfee, respondent in the case Mazza-MacAfee.

November 20, 1956, the Sacred Roman Rota, with regard to a case arising in Marseilles, France, issued an edict citing M. René Pellicci, respondent in the case Vaudano-Pellicci.

November 30, 1956, the Sacred Roman Rota, with regard to a case arising in Chicago, Illinois, U.S.A., issued an edict citing Mr. Vernon Hunt, respondent in the case Freund-Hunt.

September 27, 1956, the Tribunal of the Vicariate of Rome, with regard to a case arising in Rome, issued an edict citing Mr. John F. Carthy, respondent in the case Carthy-Marcellini.

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CIVIL

SEGREGATION

The United States District Court for the Middle District of Alabama, sitting as a three-judge panel, has held, with one judge dis-

senting, that racial segregation is unconstitutional in intrastate bus transportation. The court thus lined up with the Court of Appeals for the Fourth Circuit which has declared that the separate but equal doctrine can no longer be followed as a correct statement of the law, whether in public schools, public recreational facilities or intrastate common-carrier transportation.

Tracing the long series of cases, even prior to the public school ruling, in which the Supreme Court was striking down segregation, the majority declared that *Plessy v. Ferguson,* itself a transportation case, "has been impliedly, though not explicitly, overruled, and . . . , under the later decisions there is now no rational basis upon which the separate but equal doctrine can be validly applied to public carrier transportation within the City of Montgomery." Even a statute can be repealed by implication, so the court remarked that certainly "a judicial decision, which is simply evidence of the law and not the law itself, may be so impaired by later decisions as no longer to furnish any reliable evidence."

The court concluded that Alabama statutes and Montgomery ordinances requiring segregation of races in common-carrier buses violated the due process and equal protection clauses of the Fourteenth Amendment.

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DOUBLE JEOPARDY

The Supreme Court of New Jersey, in a four-to-three decision has decided that a criminal defendant was not subjected to double jeopardy, nor was he denied the benefits of the doctrine of collateral estoppel, by being convicted of the armed robbery of one of four persons held up in a tavern, after he had been acquitted of the same offense as to the other three.

Indicted for armed robbery against three of the four patrons of the barroom who had been held up, the defendant was acquitted when the three failed to identify him. The fourth patron made a positive identification of him. The defendant was again indicted for armed robbery of the man who had identified him on the first trial and who again identified him on the second trial, while the other three testified in his behalf. On this trial defendant was convicted.

The defendant claimed that he had been subjected to double jeopardy in violation of the state constitution. Even if he had not, he

contended, the outcome of the first trial, based upon the same circumstances as the second, was *res judicata,* or, as the court more precisely termed it, collateral estoppel. The double jeopardy argument the court denied, saying that the contention failed under either the " same evidence " or the " single act " test, because to prove the crime against each person different evidence was necessary, and further, there was a seperate and different act in each case—the forcible taking of the victim's property.

The dissent felt that the case fitted the rationale of New Jersey cases that where the " fact prosecuted " is the same in both prosecutions, though the offenses differ in " coloring and degree ", there is double jeopardy. Further, the doctrine of *res judicata* should apply for the ultimate issuable fact had been determined in the first trial. Otherwise the citizen in such circumstances would be subject to successive prosecutions until a convicting jury would be found.

* * * * *

DIVISIBILITY OF DIVORCE

The Supreme Court of Oregon has granted a wife enforcement of the alimony and property settlement parts of her California interlocutory decree, though in the meanwhile the husband had obtained a divorce in Nevada after substituted service on the wife. The court held that it did not have to recognize the Nevada divorce as terminating the wife's alimony and property rights as set forth by the California court, since it found that the Nevada court lacked personal jurisdiction of the wife. Although the wife had filed an answer and appeared and testified in the Nevada action, the Nevada decree recited that she had made but a "special answer " and that she had been defaulted. Thus, the Oregon court said it had to be bound by the Nevada decree's own recital that the Nevada court lacked personal jurisdiction. Even without this, however, the Oregon court declared that it could reach the same conclusion because the issues of alimony and property settlement rights were neither made an issue nor litigated in the Nevada suit, so there could be no charge that Oregon was not giving full faith and credit to the Nevada decree.

The Supreme Court of Wisconsin has ruled that a wife who had obtained a divorce from her husband in Washington on contructive service could have the matters of child custody, alimony and child support payments determined in an action in Wisconsin, where she

had obtained personal service on her former husband. When the Washington decree was issued the husband had taken the child to Wisconsin, so the court in Washington had no authority to issue any custody and support order. There was no personal service on the defendant there so there was no provision in the decree as to alimony. The Wisconsin court said that when a wife obtains a divorce on the basis of constructive service only the right to alimony continues until it is adjudicated. The decree of divorce in such a proceeding destroys only the marital *res*, without barring a subsequent action for alimony. The decree in such a constructive-service case establishes nothing more than that the marriage relationship is destroyed. There was no question of full faith and credit, because Wisconsin was giving full faith and credit to the Washington decree so far as it went.

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DEMONSTRATIVE EVIDENCE

The Appellate Court of Illinois, Fourth District, has held that whether demonstrative evidence is proper must rest in the sound discretion of the trial judge, subject to review. It would not hold that a skeletal model may never be used, but merely that the model must be used actually to explain some relevant issue in the case. The court found no error in its use when the trial court had permitted a medical witness for the plaintiff to use a plastic model of a human skeleton to show the proper alignment of bones in the pelvic area, after having shown the displacement of those bones as disclosed by an X-ray of the plaintiff. The defendant had contended that this was error, on the ground that it was unnecessary to an understanding of the issues, and was gruesome and tended to arouse the jury's emotion rather than explain anything. The court held that the relevancy and explanatory value must also be within the discretion of the trial judge, which discretion is subject to review as to the use made of the model, to curtail abuse. "If it appears that the exhibit was used for dramatic effect, or emotional appeal, rather than factual explanation useful to the reasoning of the jury, this should be regarded as reversible error, not because of abuse of discretion, but because actual use proved to be an abuse of the ruling."

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INTERFERENCE WITH EMPLOYMENT

The California District Court of Appeal for the Second District has sustained the trial court's dismissal of a suit by twenty-three plaintiffs, writers, actors, actresses, a story editor and a stagehand, against a group of motion picture producers and distributors, two members of the House Committee on Un-American Activities and an investigator for the Committee. The complaint alleged that the defendants had joined together in an agreement "to desist and refrain" from employing anyone who pleaded the Fifth Amendment or refused to appear before the Committee, and that the defendants had published and circulated a list of persons falling into those categories. The result, the complaint charged, was that the plaintiffs were refused and excluded from employment in the professions to which they had devoted the major portions of their lives. Each sought $2,500,000 damages and an injunction.

The Court of Appeal read the complaint as one sounding in tort for wrongful interference with future or prospective contract or business relations. Thus premised, the complaint was found fatally defective because it did not allege, nor did it appear from anything else, that such contract or employment relationships would otherwise have blossomed. None of the plaintiffs made a showing in their complaint that they were employed in the motion picture industry at the time the alleged agreement among the producers and distributors was made. Their employment terminated before the agreement charged in the complaint, so the inference would be that their continued nonemployment was unconnected with the alleged agreement, in the absence of pleading otherwise. As for the plaintiffs' allegations that they were being excluded from employment because they refused to answer questions "concerning their political affiliations, associations and beliefs," the court pointed out that the Committee's questions concerned "their membership in 'a conspiratorial and revolutionary junta' (Justice Jackson's words in his concurring opinion in *American Communications Association v. Douds,* 339 U. S. 382) one of whose objectives is the overthrow of our government by force and violence, a malignant force which menaces the very existence of the government." Said the court, no one was investigating the political beliefs of anyone.

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CHARITABLE TRUST

The Appellate Court of Illinois for the First District has adhered to the rule that where charitable trusts are involved only the state has an interest to deny a petition of the National Sculpture Society to intervene, on the ground that sculptors as a class had an interest in the suit, in a case wherein the Art Institute of Chicago sought authority to place a building in a different location and to use it as an administration building. In 1905 a testator had bequeathed $1,000,000 in trust to the Institute, with the provision that the income from the fund be used by it for the "erection and maintenance of enduring statutary and monuments . . . in the parks, along the boulevards, or in other public places within the City of Chicago, Illinois, commemorating worthy men or women of America, or important events in American History." A decree in 1933 construed "monument" to include a memorial building and authorized the Institute to erect a building in a certain location. It was this building which the Institute sought to erect elsewhere and use as an administration building.

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FEDERAL v. STATE COURTS

The Court of Appeals for the Fifth Circuit has held that the federal judiciary has power to enjoin enforcement of local criminal law if there is found a "substantial basis for equitable relief." There was an ordinance of Carrollton, Georgia, which required every labor union agent, organizer and promoter operating within the city to be licensed by the mayor and city council. The initial license fee was $1,000, and $100 was required for each day of activity. The plaintiffs, a union and one of its organizers, sought an injunction in a federal district court against enforcement of the ordinance on several grounds, including unconstitutionality and state interference with a field pre-empted by federal law. The injunction was refused on the grounds that federal courts "may not grant an injunction to stay proceedings in a state court except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments," and further that equity does not ordinarily enjoin criminal prosecutions.

The Court of Appeals said that the instant case presented circumstances of genuine and irretrievable damage if equitable relief were not furnished, even though the result was interference with a state's

criminal prosecution. The court said, " We start here with an exaction euphemistically called a 'license tax' but which in its cumulative effect is exorbitant and punitive. Its effect, and therefore its purpose, seems not to regulate, but to prohibit." If payment of the license fee to test the validity of the ordinance were required, the court said, this would be such a heavy burden on the petitioner as to amount to a denial of judicial review. Further, there appeared to be no certain way in Georgia for a person to pay the fee or fine under protest and later recover it.

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HOMIDICAL BENEFICIARY

The Supreme Court of Florida has decided that whether a life-insurance beneficiary who shot and killed the insured is entitled to the proceeds of the policy must be determined in a civil suit, even though the beneficiary has been tried and acquitted for the homicide in a criminal case. The reason is the well-established rule that the verdict and judgment in a criminal proceeding are not admissible in a civil proceeding as evidence of the guilt or innocence of a party to the civil cause. The beneficiary in question, in the criminal case had first pleaded guilty to manslaughter and then had withdrawn that plea and gone to trial on a second-degree murder charge of which she was acquitted. The common-law rule is that a life-insurance beneficiary who murders or feloniously causes the death of the insured forfeits all rights under the policy. Neither the beneficiary's acquittal nor her initial plea of guilty could be admitted in a suit in which the proceeds of the policy were in controversy. The court, therefore, approved the trial-court's decree that the case go to trial on an issue " to determine by a preponderance of the evidence whether the claimant wife feloniously killed the beneficiary."

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LIBEL AND SLANDER

The Supreme Court of Florida has decided that a Florida newspaper which accurately reported the libelous comment of a political candidate should be dismissed from a libel suit, while the candidate must answer the complaint. The newspaper had simply reported that one of the candidates for governor of Florida said in a speech that the plaintiff " is a phony and his poll is a phony." In hand-

bills, published separately by the candidate himself, it was insinuated that anyone who gave the plaintiff money for subscribers to his poll service would make a good showing in the poll. While both the newspaper and the candidate were qualifiedly privileged, the court held that they must act without malice. In view of the absence of violently abusive language and the presence of accurate reporting the court held that there was nothing to show the newspaper acted maliciously. Because of the more violent nature, however, of the handbill, the court concluded that there could possibly be a finding of malice as to the candidate, and that the complaint should not be dismissed as to him.

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IMMUNITY OF CHARITABLE INSTITUTIONS

The Supreme Court of Ohio has cast aside what remained of that state's doctrine granting immunity to charitable, non-profit, hospitals for the negligence of their employees. As in many other states, in Ohio the charitable hospital immunity has undergone judicial erosion from absolute immunity to specialized and limited immunity. Examining the decisions, the court determined that the basis of the Ohio rule was a public policy which sought to encourage " enterprises with the aims and purposes " of non-profit charitable hospitals. The court ruled that whatever factors upon which the former public policy had been based no longer existed. It noted that several classes of indigent persons and dependent children now receive aid in the form of hospitalization expense and that in 1955 more than half of the gross charges incurred by American hospital patients was paid by hospitalization and related insurance. The court further noted that liability insurance is available to hospitals. The court concluded that a charitable hospital is liable for the torts of its servants, but warned that it was not deciding " that persons working in a hospital, such as doctors and nurses, under circumstances where the hospital has no authority or right of control over them, can bind the hospital by their negligent actions."

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FEMALE WRESTLERS

The Supreme Court of Oregon has upheld against constitutional attacks Oregon's statutory ban against women wrestlers. A female wrestler contended that the statute which prohibits the licensing of

anyone "other than a person of the male sex" for wrestling competition or exhibition violated the equal protection clauses of the Federal and Oregon Constitutions. The court held that it was permissible class legislation because there was a reasonable and natural basis in the wrestling field for distinctions between men and women. The court noted that the differences have long been recognized as valid in the fields of labor and industry. The court also noted that the legislature which enacted the statute was predominantly male and ventured that the legislature intended "that there should be at least one island in the sea of life reserved for man that would be impregnable to the assault of woman," and continued, "is it any wonder that the legislative assembly took advantage of the police power of the state in its decision to halt this ever-increasing feminine encroachment upon what for ages had been considered strictly as manly arts and privileges? Was the act an unjust and unconstitutional discrimination against woman? Have her civil or political rights been unconstitutionally denied her? Under the circumstances, we think not."

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THOMAS OWEN MARTIN

APPENDIX

ROMAN RESPONSES AND DECREES*

AAS, XXXXVIII, 59-60—Decree of Sacred Cong. of Sacr. 14 Dec. 1955. Erection of Provincial Tribunal for Nullity of Marriage cases, for Province of Edmonton, in Edmonton. Change from Decree of 28 March 1949, which arranged for all cases of Nullity of Marriage to be tried in first instance by Provincial Tribunal of Vancouver. Reasons: distance, difficulty, delay. Appeal for second instance from Edmonton to Toronto.

*Read by the Reverend Thomas A. Brockhaus, O.S.B., J.C.D., at the annual meeting of the Northwest Regional Chapter of The Canon Law Society of America, held at Baker, Oregon, September 27, 1956.

Op. cit., 509-510—Decree of Sacred Consist. Cong. 24 Jan. 1956. Quebec constituted primatial See of Canada—honorary title.

AAS, XXXXVII, 838-847—*Decretum Generale* and *Instructio* of Sacred Cong. of Rites on Restoration of Liturgy of Holy Week, 16 Nov. 1955. Number III, 18 and 19, of the Instruction permits the sick in danger of death to receive Holy Communion apart from the liturgy of Holy Thursday, Good Friday and Holy Saturday; *not* " the sick and those in danger of death ", as the NCWC translation erred.

AAS, XXXXVIII, 153-154—Declaration of Sacred Cong. of Rites, 15 March 1956, on function of last three days of Holy Week (actually includes Palm Sunday). Services simple or solemn, depending upon whether sacred ministers are available. Good Friday service of obligation wherever Reposition held on Holy Thursday. If Holy Thursday rite cannot be celebrated, the local Ordinary can permit two low Masses on Holy Thursday for the sake of people, in churches and public oratories. Easter Vigil can be celebrated or omitted in churches and oratories where Holy Thursday and Good Friday services were celebrated or omitted. Priests with care of several parishes can be permitted by local Ordinary to binate on Holy Thursday and Easter Vigil; and repeat the Good Friday service, but not in the same parish.

AAS, XXXXVIII, 5-25—Pope Pius XII, Encyclical on Sacred Music 25 Dec. 1955. Remarkable for its Section II on the laws of Sacred Art in general.

Op. cit., 309-353—Pope Pius XII, Encyclical on Worship of Most Sacred Heart of Jesus.

Letter from Apostolic Delegate, 20 June 1956—Nuptial Blessing may be given in English only when it is imparted *outside of the Holy Sacrifice of the Mass.* During Mass it must be in Latin. This changes the *Collectio Rituum*, p. 119. A new edition of the *Collectio Rituum* is now in preparation.

AAS, XXXXVIII, 156—20 February, 1956, Pope Pius XII named Father Annibale Bugnini, C.M., a consultor of the Sacred Cong. of Rites (II Section, for the Sacred Liturgy). Bugnini coauthored a commentary on the Decree on Simplifying the Rubrics. His commentary appeared first in the *Ephemerides Liturgicae*, LXIX (1955), 113-207, then in a second edition in a brochure with more

extensive treatment and a bibliography and index (*Edizioni Liturgiche,* Roma, Via Pompeo Magno, 21).

Op. cit., 161-188 (N. 4)—Whole issue devoted to observance of Pope Pius XII's eightieth birthday and seventeenth anniversary in papacy. Back cover advertises $20 book, parchment-bound volume by 33 scholars commemorating event.

Op. cit., 189-192—Motu Proprio *Nihil Ecclesiae* of Pope Pius XII, 11 Feb. 1956. *"Regina Mundi"* Institute for advanced education and training of teaching nuns declared of pontifical right, given its own statutes, authorized to grant diplomas, proposed as model for similar institutions, given authority to grant affiliation to sister schools. This institute for women religious to study sacred sciences was opened in Rome, October 15, 1954 (S.C. de Rel.).

Op. cit., 295-296—Decree of Sacred Cong. of Religious, 26 March 1956. Norms for Meetings treating of renovation and adaptation of States of Perfection. States that movement started by Congress of Religious held in Rome in 1950 has contributed greatly to religious perfection and formation as well as to the apostolic ministry and coordination among the various Institutes. In order that this movement proceed in a discreet and orderly manner, the following norms are laid down, especially if there is question of renovating the discipline and internal life of the States of Perfection, without prejudice to the rights guaranteed to Ordinaries by the Sacred Canons:

1. Meetings, congresses (whether diocesan, regional or national) courses of lectures or special school sessions for men or women members of the States of Perfection, in which their internal life, juridical standing, or their education and formation are discussed, may not be held or established without consulting the Sacred Congregation of Religious. The Holy See wants to know what will be taught, how timely the programs will be, how competent and experienced the leaders and teachers.

2. The promoters and presiding officers of these conventions and courses will therefore send a copy of their program to the Sacred Congregation in good time beforehand. After the meeting, the presiding officer will send the Sacred Congregation a report of the matters treated, the discussions held, the resolutions formulated, and whatever else might affect the renewal and adaptation of the States of Perfection.

3. Wherever there are already extant federations or councils of Major Superiors, with their own statutes and special commissions approved by the Holy See, their help should be requested, and the names of approved men to speak at the conventions and courses, be proposed to the Sacred Congregation.

4. Such meetings convoked by local Ordinaries for the members of the States of Perfection working in his diocese are approved as praiseworthy.

AAS, XXXXVIII, 512-526—Instruction of Sacred Cong. of Religious, 25 March 1956, " On the Cloister of Nuns." Since the 1924 Instruction on the Cloister became outdated in not providing for the minor papal cloister introduced by the Apostolic Constitution *Sponsa Christi* (21 Nov. 1950), a new instruction on the Cloister is in order.

Op. cit., 354-365—Pope Pius XII, Apostolic Constitution, *Sedes sapientiae,* 31 May 1956, lays down principles and norms to be followed in the training of aspirants (students) for the clerical religious state. Begins with comparison of religious and diocesan clergy, also of clerical and lay religious, discussion of nature of divine and ecclesiastical vocation.

Private *Dubia* and *Solutiones* of Sacred Cong. of Religious, Prot. N. 8743/55—Letter of Apostolic Delegate of 13 Nov. 1936 on Bonds and Annuities is still in force. Amount of $5,000, according to S. Cong. Consist. 18 Oct. 1952 and S. C. Rel. 29 Jan. 1953 is substituted for $6,000. This refers to the grand total of the obligation, and there is a " *mens* " that the benefactor can get all his money back if the religious do not pay as agreed, but the religious do not have to refund more than the total they received unless there was an agreement to the contrary.

AAS, XXXXVIII, 61-64—Instruction of Biblical Commission to local Ordinaries, 15 Dec. 1955, places all Biblical Associations, Bible Weeks and Bible Days directed to the faithful, under the supervision of local Ordinaries. It seems some speakers made irresponsible statements, spread unsafe teaching, recommended dubious books.

Book Reviews

DOCUMENTS OF AMERICAN CATHOLIC HISTORY. Edited by John Tracy Ellis. The Bruce Publishing Co., 1956. Pp. xxiv-677. Price $8.75.

An historian of the Catholic Church in the United States must have at hand at least the principal documents illustrating its origin and development. These documents are not always readily accessible and for this reason alone the book under review will be welcomed by scholars.

The editor of these documents, Msgr. John Tracy Ellis, Professor of Church History at the Catholic University of America, states in his preface that the early period of the Church in the United States is preferably considered, in documentary fashion, according to national colonies. Thus, the periods of Spanish, French and English colonization are separate periods in this documentary history. Following these units is a chronological presentation of documents under the title " The National Period ". The first document of this period is the Apostolic Brief *Ex hac Apostolicae* erecting the See of Baltimore. The last document in this period is the Encyclical *Sertum laetitae* written to the American Hierarchy on the occasion of its sesquicentennial. Between these two documents are many notices of the growth and extension of the Church in the United States. Not all of these notices are, however, documents in a strict sense. Some of them are reports, commendatory letters and incidental data. All are important to obtain a balanced view of the growing Church in the United States. To this purpose the comments of the editor are very useful.

For those whose primary interest is the canonical aspect of the Church in addition to the two documents mentioned above, the following may be cited: Archbishop Marechal's report to Propaganda, lay Trusteeism in Norfolk, the Papacy's relationship to temporal affairs as explained by Bishop Kendrick, the interpretation of American liberty by Archbishop Hughes, American diplomatic relations with the Holy See, education of Catholic children in public schools, forbidden societies, Church and State in the United States

and the encyclicals of Pope Leo XIII, *Longinqua oceani* and *Testem benevolentiae.*

This is a lengthy book and it contains many features which will appeal to professors and students. While a classification of actually canonical documents would have been better for students of Canon Law, the present arrangement is suitable for all.

The index is detailed and serviceable.

DE PROCESSIBUS. Franciscus Roberti. Vol. I, De Actione, De Praesuppositis Processus et Sententiae de Merito. Editio Quarta. In Civitate Vaticana, 1956. Pp. xv-679.

The author of this book is the secretary of the Sacred Congregation of the Council. He has had wide experience in Canon Law and his published work in procedural law has gone through several editions.

This volume contains the author's introduction to procedural law, its fundamentals and the object of procedural law. All these parts are carefully drawn up and give ample evidence of the author's competence.

The introduction considers the evolution, sources and literature of procedural law. This is followed by a consideration of the concept of law, its divisions, the concept of pleas, their relationship with law and the concept and various aspects of procedural law.

As fundamental to processes, the author writes of jurisdiction, judicial competence, the erection of tribunals and their discipline. There is also ample consideration of the rights of parties in procedural law. The object of procedural law is entirely a consideration of actions and exceptions in law.

This book is particularly noteworthy for the frequent comparison between the Code of Canon Law and the procedural law of the Oriental Church. Wherever possible, the author seeks to clarify the law of the Code by comparing it with the procedural law for the Orientals. This is productive of much solid interpretation for there were some points somewhat obscure in the fourth book of the Code. It is to be hoped that the author will continue this examination and comparison in the second volume of his work.

Of the many pleas considered by the author, the plea of nullity can be mentioned as outstanding in treatment. The exposition is

clear and very useful. Some terms clearer in the Oriental Code are used to interpret the law for the Latin Church.

The footnotes of the author indicate his wide knowledge of documents and commentators. It is unfortunate, however, that he did not hit upon a better device for abbreviations. Some of them are entirely too long and result in mild confusion.

There is neither bibliography nor index. When volumes are published separately, readers should be furnished with separate indices.

LEX PROPRIA Confoederationis Congregationum Monasticarum Ordinis Sancti Benedicti. Commentarium, Historia, Fontes. Amandus Di Vincenzo, O.S.B., D.U.J. St. Gregory Abbey, Shawnee, Oklahoma, 1956. Pp. 332. Price $2.50.

The latest effort to unify the monastic communities under the rule of St. Benedict was made by Pope Pius XII in the Apostolic Breve *Pacis vinculum,* March 21, 1952. This document unites all the Benedictine Congregations into one confederation keeping intact, however, essential autonomy of the seperate monasteries with all their rights and privileges. Hence, the confederation does not in a real and canonical sense become a new religious Order. The purpose of the confederation, as stated in the separate law governing it, is to unify the Benedictine Congregations, preserving the Benedictine Rule and traditions and, at the same time, accommodate the Congregations to modern circumstances.

The law of Pope Pius XII is a continuation of the work of Pope Leo XIII and an extension of the concept of *Abbas Primas* as found in the Code of Canon Law.

The author has written a splendid commentary on the law of unification of the Benedictine Congregations. He considers this law article by article and compares it with the Pontifical documents and the canons on Religious in the Code. Very little is taken for granted and the fundamental concept of moral collegiate persons is well explained. He makes constant reference to writers who have diligently investigated all the aspects of religious life. This book, therefore, has a wider appeal than just to Benedictine monks.

Several documents are presented by the author as sources for the law of unification. These are documents of Pope Leo XIII and rescripts of the Sacred Congregation of Bishops and Regulars and the

later Congregation, the Sacred Congregation for Religious. Of considerable interest is the draft copy of the Confederation as written by Fr. Zelli, a former Abbot of St. Paul's.

In his bibliography, the author limits himself to works cited in the commentary. There are, however, many modern commentaries on the law for Religious. An exhaustive index is provided.

The Confederation of the Benedictine Congregations should according to the intentions of Pope Pius XII be productive of much good. There is little doubt that the concerted and united effort of all the Benedictine Congregations will strengthen religious life and advance the interests of the Church.

IUS PONTIFICALIUM. Joachim Nabuco. Desclée & Socii, Parisiis-Tornaci-Romae-Neo Eboraci, 1956. Pp. xxi-403.

This book is an introduction to the study of the Ceremonial for Bishops. Hence, it ought to be read together with the author's excellent commentary on the Ceremonial published in 1945. Many references are made in this introductory study to the commentary itself establishing an integrated exposition of the law and the ceremonial governing Pontifical rites.

The significant point in this book is the extreme detail furnished by the author. There is scarcely a book today on Pontifical rites which so thoroughly states the minutest detail in costume and custom. Much of this is carried in the text, more is contained in the abundant footnotes. An example of this detailed discussion may be found in the author's opinion on the alleged restriction of a cameo ring to the Supreme Pontiff, another, on the use of the archiepiscopal cross, and still another, on the use of the seventh candle at Pontifical Masses.

As the author states, the general division follows the books of the Code of Canon Law. Under the title of " persons ", the various grades of Prelates are described. Colleges of Prelates are thoroughly described. A study of these grades is necessary to have in mind a proper view of the numerous Prelates existing today. Under the title of " things ", the author discusses the customs and ministry of Bishops and Prelates. In their proper place are mentioned the vestments reserved to the Pope. There is also a description of the

costume, recently introduced, for the appearance of Prelates at civil functions.

In addition to the detailed footnotes, the author provides a catalogue of the various editions of the Ceremonial for Bishops. This catalogue includes editions published in Rome, Venice, Turin, Malines and Ratisbon. Notice is also taken of editions published elsewhere, for instance, in Lyons and Cologne. There are a few remarks concerning these editions of the Ceremonial for Bishops.

There is a useful index of topics, places and things. These are well arranged. The bibliography is satisfactory. Among other things, it is divided into books on the Ceremonial itself and on the use of the Pontifical costume. There are not many recent works on these points in the bibliography but the books of Nainfa and McCloud are mentioned.

High praise should be given the author for his excellent study. His work is indispensable for all who have any duties connected with Pontifical rites. This book should be found in chanceries, seminary libraries and in the hands of Prelates.

LA FORMAZIONE DEGLI EFFETTI CIVILI DEL MATRIMONIO NEL REGIME CONCORDATARIO ITALIANO. Roberto Bortolotti, S.J. Analecta Gregoriana, vol. LXXXIV, Series Facultatis Iuris Canonici, Sectio B (n. 4). Romae, Apud Aedes Universitatis Gregorianae, 1956. Pp. vii-191.

The Concordat between the Holy See and Italy has been a prolific source of monographs. Not the least item considered has been the relationship between canonical marriage and civil effects. Despite the wealth of commentary on marriage in the law of the Concordat, the author addresses himself to the basis from which arise civil effects due to canonical marriage.

The Concordat demands registration of canonical marriage. The question, therefore, is whether such registration is the basis of civil effects. The principles of Public Ecclesiastical Law as founded in Theology must be kept in mind when concessions in concerdats are considered. Theology requires that valid contracts be recognized in all systems of law. Their prime effects should also be recognized. Secondary effects cannot claim similar recognition.

The author examines the opinions of writers. These opinions are classified as hypotheses. They consider registration of canonical marriage with the civil authorities mostly as a condition to be implemented before such marriages can claim civil effects.

The author stresses the civil and legal equality of canonical marriage and civil marriage. He concludes that the Concordat assigns equal civil rights and effects to both marriages. He does not ignore the importance of registration of canonical marriage but he is not inclined to believe that this is the real basis for obtaining civil effects. This conclusion is a logical statement drawn from the author's study of texts and commentaries. It is difficult to see how any other conclusion can be drawn. By agreement between the Holy See and Italy, canonical marriage must be registered primarily, perhaps, for recognition and civil proof of marital status but not as establishing a basis for recognizing the validity of the marriage contract.

The bibliography is satisfactory but there is no index. The table of contents, however, is detailed and will satisfy the funadmental purpose of an index. The footnotes are useful and in every way indicate the industry of the author.

INTRODUCTIO IN CODICEM. Udalricus Beste, O.S.B., I.C.D. M. D'Auria, Pontificius Editor, Napoli (Italia), 1956. Editio Quarta. Pp. 1097.

The text revised periodically by Fr. Beste of the Athenaeum of St. Anselm in Rome has for some years been a favorite commentary on the Code of Canon Law. The present edition is the fourth and it contains all the latest decisions and documents of the Holy See. There is every reason to believe that this new edition will be widely adopted.

The method followed in this commentary is the progressive series of canons. Many separate titles are explained before the exposition of the text begins. As an introduction to the Code of Canon Law, the author prefixes a short study of Public Ecclesiastical Law. This is useful especially in seminaries where no specific course in Public Law is offered.

As might be expected, the commentary on the separate canons is uneven in length. Nevertheless, sufficient attention is paid to fun-

damental law on norms, persons and things. Fr. Beste has the right idea in considering the fourth and fifth books of the Code as supplementary to the earlier books of the Code. Thus the substantive law of persons and things is buttressed by the adjectival law of processes and penalties. The whole arrangement is calculated to yield a proper perspective of Canon Law.

The appendices are useful. One is a list of the quinqennial faculties granted to Ordinaries, the other is a list of faculties granted to Apostolic Delegates. A footnote advises that these faculties may be increased by personal concessions. The index is well constructed and will be of great service. The bibliography, however, leaves much to be desired. It is brief and the proper division between reference works and magazines is not followed. Many works such as doctoral dissertations which would be useful in parochial and curial practice are not included in the bibliography. Some notice of these works should have been taken if only to show the progress of the studies in Canon Law.

Fr. Beste's commentary is recommended to seminarians and to those interested in the general study of Canon Law. Graduate students will find that this work is not of daily use to them.

EDWARD ROELKER

Chronicle

Auxiliary Bishop Kearney of Brooklyn died on October 1 of a heart attack.

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At the suggestion of Cardinal Valeri, Prefect of the Sacred Congregation of Religious, ninety-five major superiors of male religious communities formed a national association for the advancement of religious life in the United States. The officers of the association for the coming year are: the Most Rev. Abbot Lawrence Vohs, O.S.B., President; the Very Rev. Clement McHale, O.S.A., Vice-President; the Very Rev. William Schmidt, S.J., Secretary; the Very Rev. Raphael P. Kieffer, O.Carm., Treasurer; and the Very Reverends Edward Hughes, O.P., Neil Parsons, C.P., Joseph Srill, S.M., were chosen to serve on the Board as Members. Also elected as a member of the Board was Brother Ephrem O'Dwyer, C.S.C.

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Archbishop Murray of St. Paul, Minnesota, died October 11. He was succeeded by his Coadjutor, Archbishop Brady.

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Archbishop Mitty of San Francisco marked his Golden Jubilee as a priest on October 21.

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Auxiliary Bishop Stephen Kocisko of the Pittsburgh Byzantine Rite was consecrated in Pittsburgh's Cathedral of St. Paul.

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The Blessed Sacrament Fathers observed their 100th Anniversary during the week of October 21 with special commemorative rites in New York City.

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Archbishop Molloy of Brooklyn died on November 26 at the age of 71.

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Bishop Senyshyn, O.S.B.M., was installed as Apostolic Exarch of the Stamford Exarchate on December 15, by His Excellency, the Apostolic Delegate to the United States.

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Archbishop Keough of Baltimore was elected Chairman of the new Administrative Board of the NCWC at the annual meeting of the hierarchy in Washington. Archbishop Alter was elected Vice Chairman; Archbishop Ritter of St. Louis, Secretary; and Archbishop O'Hara, C.S.C., of Philadelphia, Treasurer.

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Bishop Hyland was installed as the first Bishop of Atlanta, Georgia, on November 10, by the Most Rev. Amleto Cicognani, Apostolic Delegate.

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Bishop Ryan of Burlington, Vermont, died on November 3.

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The Rev. Edmund Walsh, S.J., founder of the Georgetown School of Foreign Service in 1919, and Vice-President of Georgetown University, died on October 31, at the age of 71.

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The Rev. Edward O'Meara of St. Louis, Missouri, was named Assistant National Director of the Propagation of the Faith.

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The Very Rev. Christopher O'Toole, C.S.C., Superior General of the Congregation of the Holy Cross, announced the division of the United States' Brothers Province of the Congregation into three administrative units to be effective November 1.

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Monsignor Foley of Dubuque has been named President of Loras College to succeed Bishop Lane who left the College on November 19 to become Bishop of Rockford.

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Bishop Marling, C.PP.S., was installed as the first Ordinary of the Jefferson City Diocese on November 27 with Archbishop Ritter officiating. On the following day, Archbishop Ritter installed Bishop Helmsing as the first Ordinary of the Springfield-Cape Girardeau Diocese.

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On December 6, Bishop John Cody celebrated the 25th Anniversary of his ordination to the priesthood.

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Bishop Elko has been appointed Auxiliary Chaplain to the Military Ordinariate by Cardinal Spellman.

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In Chicago, 250 major superiors of congregations of sisters in the United States formed a permanent Conference for the United States for the advancement of religious life in America. The Conference was formed at the wish of Cardinal Valeri of the Sacred Congregation of Religious.

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Bishop Lambert Hoch of Bismarck, N. Dakota, was named Bishop of Sioux Falls, S. Dakota.

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Monsignor Brunini was named Auxiliary Bishop to Bishop Gerow of Natchez, Mississippi.

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Monsignor Clinch was named Auxiliary Bishop to Bishop Willinger, C.SS.R., of Monterey-Fresno, California.

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Cardinal McIntyre celebrated the funeral Mass for his former teacher, Bishop Eustace of Camden who died on December 11. Monsignor Mosier has been appointed Administrator of the see.

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The Very Rev. Andrew McAndrew, S.M.A., has been elected as the new Provincial of the American Province of the Society of the African Missions.

ROMAEUS W. O'BRIEN, O.Carm.

THE CANON LAW SOCIETY OF AMERICA

ANNUAL NATIONAL MEETING

On Tuesday and Wednesday, October 23-24, 1956, the Canon Law Society of America convened for its eighteenth annual meeting, held at the Hotel Claridge, in Atlantic City, N. J. The registration for the convention, which had begun at 10:00 A.M., revealed the participation of almost 200 members, representing numerous archdioceses and dioceses throughout the United States and Canada, and a notable number of religious orders and communities.

EARLY AFTERNOON SESSION

The 1:30 P.M. session was held in the hotel's Trimble Hall. The Most Rev. John J. Carberry, D.D., J.C.D., President of the Society, presided. Upon offering the opening prayer, he bespoke the Society's thanks to Bishop Bartholomew J. Eustace, the episcopal ordinary of the diocese of Camden, for his invitation to the Society to hold its meeting in Atlantic City, and to the members of the Local Arrangements Committee, headed by the Rt. Rev. Augustine T. Mozier, P.A., and Vicar General of the diocese, for its hospitality, already so much in evidence to the assembly. Regret was expressed for the absence of Bishop Eustace, whose illness prevented his personal attendance.

The President introduced the Rev. William F. Cahill, J.C.D., of St. John's University, Brooklyn, N. Y., as the speaker at this session. Father Cahill delivered a lengthy paper in which he treated of "The Dedication of Property to the Church's Patrimony." According to the Society's established policy and practice, the speaker entertained questions from the floor for a further discussion with reference to his topic. The session came to a close at 3:30 P.M.

Late Afternoon Session

This session opened at 4:00 P.M. Bishop Carberry again presided. Father Joseph J. Quinn, J.C.D., of the Metropolitan Tribunal of the Archdiocese of New York, presented a paper on "The Impediment of Functional Impotence in the Male." Like the earlier paper in the previous session, Father Quinn's paper reflected a careful preparation and a thoroughness in its treatment. Again there was a period of discussion, which further served to exemplify the application of the principles discussed in the paper, before the session came to a close at 5:30 P.M.

The Dinner Session

Prior to the banquet the members met in the hotel's West Room for a period of closer acquaintanceship and conviviality. The Park Lounge in the hotel served as the banquet hall. Seated at the head table were the Most Rev. Eric F. MacKenzie, Auxiliary Bishop of Boston, and the Rt. Rev. Victor Bartoccetti, J.C.D., Under-secretary of the Sacred Congregation of the Sacraments. His Excellency, the Most Rev. John J. Carberry, occupied the place of honor. Seated also at the head table were the national officers of the Society. About 200 were present for the banquet.

Business Session

The business session of the Society was called to order at 8:00 P.M. The session was held in Trimble Hall, with Bishop Carberry presiding. The reading of the minutes of the seventeenth annual meeting in October of 1955 was dispensed with.

The following list of deceased members since the previous meeting was then read by the President, and a prayer offered by the assembly for the repose of their souls:

Most Rev. John G. Murray (St. Paul), died October 11, 1956.
Most Rev. John J. Noll (Fort Wayne), died July 31, 1956.
Most Rev. Edwin V. O'Hara (Kansas City, Mo.), died September 11, 1956.
Most Rev. Edward J. Kelly (Boise, Idaho), died April 21, 1956.
Most Rev. Raymond A. Kearney (Brooklyn), died October 1, 1956.
Rt. Rev. Thomas F. Temple (New York City), died October 27, 1955.
Rt. Rev. Martin R. Delaney (Covington, Ky.), died November 14, 1955.
Rt. Rev. Richard T. Crean (Trenton, N. J.), died March 14, 1956.
Rt. Rev. Edward J. Szumal (Detroit), died July 27, 1956.
Very Rev. Msgr. John J. Tierney (Newark, N. J.), died December 9, 1955.
Very Rev. Msgr. Adrian F. Brandehoff (Fort Wayne), died June 19, 1956.
Very Rev. Canon J. Alfred Chamberland (Quebec, Canada), died June 28, 1956.
Rev. John J. Hickey (Philadelphia), died November 26, 1955.
Rev. Michael P. J. McMahon (Philadelphia), died November 28, 1955.
Rev. Matthew F. Ramstein, O.F.M.Conv. (Clarksville, Ind.), died December 8, 1955.

Rev. George A. Baumer (Pittsburgh), died January 26, 1956.
Rev. Thomas J. Bermingham (Chicago), died March 12, 1956.
Rev. John F. Donahue (Buffalo), died March 13, 1956.
Rev. Charles A. Sutton (Camden), died July 16, 1956.

Treasurer's Report

The Society's Treasurer, the Rev. Clement Bastnagel, of the Catholic University of America, Washington, D. C., was then invited to present his financial report. Lithoprinted copies had been distributed to all who were present at the business session, with the items of income and expense indicated in specific detail. The total income had been $5,835.83, and the total expense, $6,-118.10, indicative of an expenditure of $282.27 over and above the income. The apparent deficit resulted from the setting aside, in the previous national meeting, of a sum of $1,000.00 to underwrite the work and the project of the Institute of Study and Research in Medieval Canon Law. The Society's assets as of September 30, 1956, amounted to $19,846.47, and of this amount the sum of $16,975.45 was bearing interest in a Savings Account maintained in Washington, D. C.

In the course of the past year five published Canon Law dissertations were distributed among the members in line with the orders placed for about 1,175 copies. This brought to 215 the total number of dissertations thus distributed since the formation of the Society in 1939, and the number of individual copies distributed rose to a grand total of 54,750 copies. The report contained also a listing of the dissertations still to become printed in view of their earlier approval by the Faculty at the Catholic University in Washington during past years.

Report on Membership

As Chairman of the Membership Committee Father Bastnagel then reported on the membership, active and inactive. Actual membership in the United States and Possesions was 406, in Canada, 18, in other countries, 15, and from the hierarchy, 63, for a total of 502. Inactive membership in the United States and Possessions stood at 243, and in Canada, at 26. Thus the total inactive membership was 269. The grand total of membership, active and inactive taken together, thus amounted to 771. He also expressed the view that a gain in membership should be sought, not through any advertising campaign from headquarters, but rather through the interest that can be stimulated by the members themselves throughout the various dioceses.

Upon a motion for the adoption of the double report the Society voted for its adoption, and asked that the report be filed among the documents of the Society.

Hereupon the President announced that the Society's next national meeting in 1957 was to be held at the Adolphus Hotel in Dallas, Texas, on October 16 and 17, 1957. He expressed his and the Society's gratitude to His Excellency, the Most Rev. Bishop Gorman, for the invitation to the Society to come to Dallas.

The election of the Society's new officers was next in order. The Nominating Committee, headed by the Rt. Rev. Walter J. Furlong, presented the following slate of candidates:

For President:
Rt. Rev. Augustine T. Mozier, P.A., V.G., Camden
Very Rev. Msgr. E. Robert Arthur, Washington, D. C.
Rt. Rev. James V. Casey, Dubuque
For Vice-President:
Rev. John S. Quinn, Chicago
Very Rev. Edward R. Glavin, Albany
Rt. Rev. Timothy P. O'Connell, Worcester
For Recording Secretary:
Rev. Culver B. Alford, Albany
Rev. John W. Desmond, Joliet
Very Rev. Charles W. Burkhardt, Saginaw

No nominations were made from the floor, and accordingly the motion was made and passed that the nominations be closed. The balloting followed.

At this juncture the presiding officer introduced the Rt. Rev. Victor Bartoccetti, J.C.D., Under-secretary of the Sacred Congregation of the Sacraments in Rome, for the reading of his paper on "Observations on the Matrimonial Law of the Church and the Matrimonial Process." Upon the conclusion of this paper the floor was opened for discussion. When the discussion had been brought to an end, the results of the elections could be announced.

For President: Rt. Rev. James V. Casey

For Vice-President: Rev. John S. Quinn

For Recording Secretary: Rev. John Desmond.

The office of General Secretary and Treasurer was again to be filled by Rev. Clement Bastnagel, of the Catholic University of America. Upon the making of these announcements adjournment of the session followed.

Morning Session

On Wednesday, October 24th, Bishop Carberry called the opening session to order at 10:00 A.M. The Rev. John S. Quinn, J.C.D., of Chicago, read a paper entitled, "The Evaluation of Testimony in the Matrimonial Process." Many points of interest were drawn into the discussion that followed. The session was closed at approximately 11:15 A.M.

Luncheon Meeting

At the luncheon meeting, held in the Ocean Dining Room of the hotel, the officers of the ensuing year were to be introduced by the new President, the Rt. Rev. James V. Casey, of Dubuque. The new President spoke to the assembly in a short address before indicating the various officers for the several committees. The newly appointed officers were the following: